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8 Attorneys for Plaintiff
City of San Jose
9

10 **IN THE SUPERIOR COURT FOR THE**
11 **COUNTY OF SANTA CLARA**

12 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE AND BOARD OF
ADMINISTRATORS FOR POLICE AND
16 FIRE DEPARTMENT RETIREMENT PLAN
OF CITY OF SAN JOSE,

17 Defendants.
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22

23 I, Arthur A. Hartinger, declare:

24 1. I am an attorney licensed to practice law in all courts of the State of California. I
25 am a principal at the law firm of Meyers, Nave, Riback, Silver & Wilson. The following facts are
26 within my personal knowledge, and if called upon to testify, I could and would testify competently
27 thereto.

28 ///

ENDORSED
FILED

AUG 01 2012

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara

BY _____ DEPUTY

M. Rawson

Case No. 112CV225926

112CV226570
112CV226574
112CV225928
112CV227864

**DECLARATION OF ARTHUR A.
HARTINGER IN SUPPORT OF
DEFENDANT CITY OF SAN JOSE'S
MOTION TO CONSOLIDATE AND STAY**

Hearing:

Date: August 23, 2012

Time: 9:00 a.m.

Dept: 2

Judge: Hon. Patricia Lucas

Complaint Filed: June 6, 2012

Trial Date: None Set

1 2 Meyers Nave is counsel for the City of San Jose (the "City") in the above-
2 referenced action, *San Jose Police Officers Ass'n v. City of San Jose, et al.*; Santa Clara County
3 Case No. 112CV225926. Meyers Nave is also counsel for the City in the following Santa Clara
4 County Superior Court Cases:

5 *Robert Sapien, et al. v. City of San Jose, et al.*;
6 Santa Clara County Superior Court Case No. 112CV225928.

7 *Teresa Harris, et al. v. City of San Jose, et al.*;
8 Santa Clara County Superior Court Case No. 112CV226570.

9 *John Mukhar, et al. v. City of San Jose, et al.*; and
10 Santa Clara County Superior Court Case No. 112CV226574.

11 *AFSCME Local 101 v. City of San Jose, et al.*;
12 Santa Clara County Superior Court Case No. 112CV227864.

13 3. San Jose City Manager Debra Figone is a defendant in the four cases listed in the
14 preceding paragraph (the *Sapien, Harris, Mukhar*, and *AFSCME* Actions). Meyers Nave is
15 counsel for City Manager Figone in these actions.

16 4. I have attached as Exhibit A to this declaration a true and correct copy of the
17 Argument in Favor of Measure B, which appeared in the June 5, 2012 Pension Modification Ballot
18 Measure. I printed the attached copy from the website of the City Clerk of the City of San Jose on
19 Tuesday, July 31, 2012. This Argument states: "The city will seek judicial review before changes
20 are implemented to minimize legal disputes." The website for this document is:
21 <http://www.sanjoseca.gov/clerk/elections/2012Election/ballotargumentinfavor.pdf>.

22 5. I have attached as Exhibit B to this declaration a true and correct copy of the
23 Rebuttal to Argument Against Measure B, which appeared in the June 5, 2012 Pension
24 Modification Ballot Measure. I printed the attached copy from the website of the City Clerk of the
25 City of San Jose on Tuesday, July 31, 2012. This Rebuttal states: "Upon voter approval of
26 Measure B, the city will immediately seek a judicial review to minimize the cost of legal
27 disputes." The website for this document is:
28 <http://www.sanjoseca.gov/clerk/elections/2012Election/rebuttalagainstmeasure.pdf>.

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1 6. I have attached to this declaration as Exhibit C a true and correct copy of a March
2 6, 2012 memorandum from San Jose City Councilmember Sam Liccardo to the San Jose Mayor
3 and City Council in which Councilmember Liccardo recommends that the City file an action to
4 determine the validity of Measure B in California Superior Court or in a U.S. District Court
5 immediately upon passage of the measure.

6 7. At the March 6, 2012 City Council meeting, the City Council adopted
7 Councilmember Liccardo's recommendation. The minutes of that meeting have not been
8 finalized.

9 8. I have attached at Exhibit D to this declaration a true and correct copy of a
10 declaration that attorney Christopher E. Platten filed in the federal action entitled: *City of San*
11 *Jose v. San Jose Police Officers' Ass'n, et al.*; U.S. District Court Case No. c:12-cv-20904-LHK
12 (City's Federal Action).

13 9. In Paragraph 1 of his declaration, Mr. Platten states that he is one of the attorneys
14 for San Jose Firefighters, IAFF Local 230 ("Firefighters Local 230") and City Association of
15 Management Personnel, IFPTE Local 21 ("IFPTE Local 21").

16 10. In Paragraph 1 of his declaration, Mr. Platten states that he is one of the attorneys
17 who filed the *Sapien* Action (*Sapien, et al. v. City of San Jose, et al.*, Case No. 112CV225928). In
18 this paragraph, he also states that the individual named plaintiffs in the *Sapien* action are or were
19 members of San Jose Firefighters 230.

20 11. In Paragraph 2 of his declaration, Mr. Platten states that he is one of the attorneys
21 who filed the *Mukhar* Action (*Mukhar, et al. v. City of San Jose, et al.*, Case No. 112CV226570).
22 In this paragraph, he also states that the individual named plaintiffs in the *Mukhar* Action are or
23 were members of IFPTE Local 21.

24 12. In Paragraph 3 of his declaration, Mr. Platten states that he is one of the attorneys
25 who filed the *Harris* Action (*Harris, et al. v. City of San Jose, et al.*, Case No. 112CV226574). In
26 this paragraph, he also states that the individual named plaintiffs in the *Mukhar* Action are or were
27 members of Operating Engineers Local 3.

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2 13. In Paragraph 5 of his declaration, Mr. Platten states that:

3 Prior to the date the City Council voted to place Measure B on the ballot for the
4 June election in the course of negotiations on behalf of Local 230 and Local 21
5 with representatives of the City, I repeatedly advised these representatives that
6 provisions of the proposed ballot measure were fatally unconstitutional under both
7 state and federal constitutions.

8 14. I understand, based on information and belief, that AFSCME Local 101 approved a
9 letter to the San Jose Mayor and City Council dated August 30, 2011. I have attached a copy of
10 this letter as Exhibit E to this declaration. The letter identifies Yolanda Cruz, President, AFSCME
11 Local 101, as an author. The letter states that:

12 [C]harter amendments to limit retirement benefits for current city employees and
13 retirees – as proposed in the July 5, 2011 draft proposed ballot measure – would
14 clearly violate the California and United States Constitutions.

15 15. On June 5, 2012, the City filed an action for declaratory relief in U.S. District
16 Court, Northern District of California, entitled *City of San Jose v. San Jose Police Officers'*
17 *Association, et al.*, U.S. Northern District Case No. 5:12-CV-02904-LHK ("City's Federal
18 Action"). The case was assigned to the Honorable Judge Lucy Koh in the Court's San Jose
19 Division.

20 16. On July 3, 2012, my firm filed, on behalf of the City, its First Amended Complaint
21 ("City's Federal FAC") in the City's Federal Action. I have attached a true and correct copy of
22 the City's Federal FAC to this declaration as Exhibit F.

23 17. As of July 10, 2012, the City had served its FAC on all defendants.

24 18. On July 20, 2012, defendants IFPTE Local 21, Operating Engineers Local 3, and
25 Firefighters' Local 230 answered the City's Federal FAC.

26 19. I have attached a true and correct copy of IFPTE Local 21's Answer to the City's
27 Federal FAC as Exhibit G to this declaration.

28 20. I have attached a true and correct copy of Operating Engineers Local 3's Answer to
the City's Federal FAC as Exhibit H to this declaration.

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2 21. I have attached a true and correct copy of Firefighters' Local 230's Answer to the
3 City's Federal FAC as Exhibit I to this declaration.

4 22. On June 26, 2012, Firefighters' Local 230 and IFPTE Local 21 filed a motion to
5 dismiss the City's Federal Action. I have attached a true and correct copy of Firefighters' Local
6 230's memorandum in support of their motion to dismiss as Exhibit J to this declaration.

7 23. In their Motion to Dismiss, Firefighters' Local 230 and IFPTE Local 21 initially
8 stated that their state-court actions were seeking declaratory relief regarding *federal* law. These
9 unions subsequently filed an "errata" removing all references to federal claims in the state-court
10 actions. I have attached a true and correct copy of Firefighters' Local 230's "errata" as Exhibit K
11 to this declaration.

12 24. On July 16, 2012, the POA filed a motion to dismiss the City's Federal Action.

13 25. On July 18, 2012, Judge Koh ordered the unions to meet and confer to consider
14 filing a single consolidated motion to dismiss. I have attached a true and correct copy of Judge
15 Koh's July 18, 2012 Order as Exhibit L to this declaration.

16 26. The unions were unable to agree to file a consolidated motion, but did agree to file
17 a consolidated reply brief and to have their motions heard in a single hearing. I have attached a
18 true and correct copy of the parties' July 24, 2012 status report to Judge Koh as Exhibit M to this
19 declaration.

20 27. The consolidated hearing on the unions' motions to dismiss the City's Federal
21 Action will take place on October 4, 2012. I have attached a true and correct copy of Judge Koh's
22 July 24, 2012 Order setting a consolidated October 4, 2012 hearing as Exhibit N to this
23 declaration.

24 28. On June 6, 2012, the morning after the election, unions, City employees, and
25 retirees began filing state-court actions against the City in Santa Clara County Superior Court. As
26 of today (August 1, 2012), five state-court actions have been filed by unions or their privies
27 against the City.

28 ///

1 29. On June 6, 2012, the Police Officers' Association ("POA") filed the first state-court
2 action against the City for declaratory and injunctive relief. (*San Jose Police Officers' Association*
3 *v. City of San Jose, et al.*; Santa Clara County Superior Court Case No. 112CV225926 ("POA
4 Action").)

5 30. On July 5, 2012, the POA filed its First Amended Complaint ("POA's FAC"). I
6 have attached a true and correct copy of the POA's FAC as Exhibit O to this declaration.

7 31. The POA Action has been assigned to Department 2. The City's responsive
8 pleading must be filed by Monday, August 6, 2012. No discovery has been propounded, and the
9 initial CMC is scheduled for October 16, 2012.

10 32. On June 6, 2012, five individuals filed a state-court action against the City for
11 declaratory, injunctive, and mandamus relief entitled *Robert Sapien, et al. v. City of San Jose, et*
12 *al.*, Santa Clara County Superior Court Case No. 112CV225928 ("*Sapien* Action"). I have
13 attached a true and correct copy of the *Sapien* Complaint to this declaration as Exhibit P. I have
14 not attached the complaint's two exhibits, which are lengthy (exhibit one contains excerpts from
15 San Jose's Municipal Code and exhibit two is a copy of Measure B).

16 33. The City and Ms. Figone answered the *Sapien* Action on July 6, 2012. In late June,
17 the *Sapien* plaintiffs propounded a Request for Production of Documents (set one) and Special
18 Interrogatories (set one). The City's responses are due on August 9, 2012. The initial CMC is
19 scheduled for October 16, 2012 in Department 8.

20 34. On June 15, 2012, four current or former City employees filed a state-court action
21 against the City for declaratory, injunctive, and mandamus relief entitled *Teresa Harris, et al. v.*
22 *City of San Jose, et al.*, Santa Clara County Superior Court Case No. 112CV226570 ("*Harris*
23 Action").

24 35. On July 3, 2012, the *Harris* plaintiffs filed a First Amended Complaint ("*Harris*
25 FAC"), dropping Plaintiff Suzann Stauffer. I have attached a true and correct copy of the *Harris*
26 FAC to this declaration as Exhibit Q. I have not attached the FAC's two exhibits, which are
27 lengthy (exhibit one contains excerpts from San Jose's Municipal Code and exhibit two is a copy
28 of Measure B).

1 36. The City and Ms. Figone answered the *Harris* FAC on July 27, 2012. No discovery
2 has yet been propounded, and the initial CMC is scheduled for October 23, 2012 in Department 9.

3 37. On June 15, 2012, five current or former City employees filed a state-court action
4 against the City for declaratory, injunctive, and mandamus relief entitled *John Mukhar, et al. v.*
5 *City of San Jose, et al.*, Santa Clara County Superior Court Case No. 112CV226574 ("*Mukhar*
6 *Action*"). I have attached a true and correct copy of the *Mukhar* Complaint to this declaration as
7 Exhibit R. I have not attached the complaint's two exhibits, which are lengthy (exhibit one
8 contains excerpts from San Jose's Municipal Code and exhibit two is a copy of Measure B).

9 38. The City and Ms. Figone answered the complaint on July 6, 2012. No discovery
10 has been propounded, and the initial CMC is scheduled for October 23, 2012 in Department 8.

11 39. On July 5, 2012, AFSCME Local 101 filed a state-court action against the City for
12 declaratory, injunctive, and mandamus relief entitled *American Federation of State, County, and*
13 *Municipal Employees, Local 101 v. City of San Jose, et al.*, Santa Clara County Superior Court
14 Case No. 112CV227864 ("*AFSCME Action*"). I have attached a true and correct copy of the
15 *AFSCME* Complaint to this declaration as Exhibit S.

16 40. The *AFSCME* Complaint was filed on July 5, 2012 and defendants have not yet
17 answered. No discovery has yet been propounded, and the initial CMC is scheduled for
18 November 13, 2012 in Department 8.

19 41. At present, the City's Federal Action encompasses all legal issues in the state-court
20 actions except two: AFSCME's bill-of-attainder claim and AFSCME's ultra-vires-tax claim. The
21 only reason the City's Federal FAC does not address these claims is because AFSCME filed its
22 complaint after the City filed its FAC. The City intends to amend its complaint to add these two
23 issues.

24 42. The City has filed a Notice of Related Cases in each of the state-court actions. I
25 have attached a true and correct copy of the City's Notice of Related case from the *POA* Action to
26 the declaration as Exhibit T.

27 43. I have attached a true and correct copy of the City's Notice of Related case from
28 the *Sapien* Action to the declaration as Exhibit U.

1 44. I have attached a true and correct copy of the City's Notice of Related case from
2 the *Harris* Action to the declaration as Exhibit V.

3 45. I have attached a true and correct copy of the City's Notice of Related case from
4 the *Mukhar* Action to the declaration as Exhibit W.

5 46. I have attached a true and correct copy of the City's Notice of Related case from
6 the *AFSCME* Action to the declaration as Exhibit X.

7 47. In each of the above referenced Notices of Related Cases, the City indicated that it
8 would be filing this motion to consolidate and stay the state-court actions.

9 48. On July 17, 2012, AFSCME filed a "Response to Defendants' Notice of Related
10 Cases." In its response, AFSCME did not dispute that the cases were related. It also opposed
11 consolidation of the state-court actions. According to AFSCME, "[t]here are several distinct legal
12 and factual differences in the related cases which makes consolidation of the actions
13 inappropriate."

14 49. On July 17, 2012, John McBride of Wylie, McBride, Platten & Renner (counsel for
15 plaintiffs in the *Sapien*, *Mukhar*, and *Harris* Actions, and counsel for defendants Firefighters'
16 Local 230, IFPTE Local 21, and Operating Engineers Local 3 in the City's Federal Action), wrote
17 to Judge Lucas in Department 2. Mr. McBride wrote that, "[n]o objection to the Notices of
18 Related Cases has been filed and it would appear that an order that they are related to the [POA
19 Action] pursuant to CRC 3.300(h) would be appropriate." I have attached a true and correct copy
20 of Mr. McBride's July 17, 2012 letter to this declaration as Exhibit Y. I did not include the
21 exhibits to Mr. McBride's letter in Exhibit Y. Those exhibits are various Notices of Relates Cases
22 that appear elsewhere in this declaration as exhibits.

23 50. On July 23, 2012, I wrote to Judge Lucas in Department 2 and stated that the City
24 of San Jose agreed with Mr. McBride that the five state-court actions are related to each other. I
25 also indicated that these cases were related to the City's Federal Action. I have attached a true and
26 correct copy of my letter as Exhibit Z to this declaration.

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51. On July 30, counsel for the POA requested that the City stipulate that the five state-court actions are related. The City agreed. I signed the stipulation on behalf of the City and sent it back to the POA. As of the date that I filed this declaration, I have not heard whether the other parties have signed the stipulation.

51. The City's Federal Action is the only action that includes all parties and their privies. In fact, the City amended its original federal complaint to ensure that all stakeholders were united in a single action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I executed this declaration on August 1, 2012 in Oakland, California.

but that

Arthur A. Hartinger

1943709.1

EXHIBIT A

Argument in Favor of Measure B

Annual retirement costs skyrocketed from \$73 million to \$245 million over the last decade, causing service cuts throughout the city. The City's share of retirement costs exceeds 50% of payroll, far more than the 6.2% of payroll private employers pay for social security. Retirement costs consume more than 20% of the general fund and are projected by independent actuaries to increase for years. This is unsustainable.

Many city retirees receive more than \$100,000 per year, plus healthcare benefits.

Future generations of taxpayers will have to pay billions of dollars for unfunded liabilities created by the retirement plans.

Measure B would protect retirement benefits already earned by current employees but would reduce the cost to the city by making changes going forward. It would not cut current payments to retirees. It would prohibit spiking of pension benefits.

Current city employees will pay a larger share of the cost of retirement benefits, a step already taken by over 200 California cities. New employees and the city would share the cost of retirement benefits with a 50/50 match in a new lower-cost plan. Over 100 California cities have adopted lower-cost plans for new employees.

City employees are presently paying less than 1/4 of the cost of their retirement benefits. Private sector employees usually pay 1/2 of the cost. Measure B will require current city employees to pay more than 1/3 of the cost of their retirement benefits and new city employees to pay 1/2 of the cost of their retirement benefits.

The City Charter gives the voters the right to change retirement benefits. The city will seek judicial review before changes are implemented to minimize legal disputes.

Mayor Reed, Vice Mayor Nguyen, and Councilmembers Constant, Herrera, Liccardo, and Oliverio support Measure B.

Vote yes on Measure B for pension reform.
www.sanjosefiscalreforms.com

Signatories

Chuck Reed, Mayor of San Jose

Matthew Mahood, President & CEO, San Jose Silicon Valley Chamber of
Commerce

John Roeder, President, Santa Clara County Taxpayers Association

Suzanne Salata, San Jose Small Business Owner

Fernando R. Zazueta, Attorney at law

EXHIBIT B

Rebuttal to Argument Against Measure B

Measure B follows California law. The California Constitution grants the City authority to change employee compensation. The City Charter gives voters the right to change retirement benefits. The Municipal Code allows the City to require employees to pay more for retirement benefits, which is an element of Governor Brown's pension reforms and was recommended by the Santa Clara County Grand Jury.

Governor's Proposal:

http://gov.ca.gov/docs/Twelve_Point_Pension_Reform_10.27.11.pdf

Grand Jury Report:

http://www.scsccourt.org/court_divisions/civil/cgj/2010/CitiesMustReinInUnsustainableEmployeeCosts.pdf

Measure B would also allow employees who wish to pay less for retirement benefits to choose a lower cost optional plan that saves them and the City money.

Upon voter approval of Measure B, the city will immediately seek a judicial review to minimize the cost of legal disputes. See the legal opinion of outside counsel:

<http://www.sanjoseca.gov/mayor/goals/budget/PDF/MeyersNavePublicLegalOpinion.pdf>

A Stanford report found that San Jose public safety retirees' average annual pension benefit (\$90,612) is the highest of any independent pension system in California.

[http://siepr.stanford.edu/system/files/shared/pubs/papers/pdf/Nation More Pension.pdf](http://siepr.stanford.edu/system/files/shared/pubs/papers/pdf/Nation%20More%20Pension.pdf)

The City Auditor found that disability retirements among San Jose's sworn employees are considerably higher than other jurisdictions and 67% of fire retirees were receiving disability retirement payments. Some employees granted disability retirements were working full time in their regular job right up to when they separated from the City. The Auditor recommended the City Charter be amended to reform the system.

<http://www.sanjoseca.gov/auditor/AuditReports/1102/1102.pdf>

The City engaged in hundreds of hours of negotiations with 11 employee unions, including 20 sessions with state mediators, but was unable to reach agreement on language for Measure B.

Vote yes on Measure B.

www.sanjosefiscalreforms.com

Rebuttal to Argument Against Measure B
Order of Signers

Marcia Fritz, President, California Foundation for Fiscal Responsibility

Dakin Sloss, Director, California Common Sense

James Duran, Chair, Hispanic Chamber of Commerce, Silicon Valley

Brian J. Blach, Pension Consultant

Donald P. Gagliardi, Attorney at Law

EXHIBIT C



Memorandum

TO: MAYOR AND CITY COUNCIL

FROM: Councilmember Sam Liccardo

SUBJECT: REVISED RETIREMENT
REFORM BALLOT MEASURE

DATE: March 6, 2012

APPROVED:

3-6-12

RECOMMENDATIONS:

Should the contemplated ballot measure be approved by the voters, no later than immediately upon the certification of the passage of the measure by the Registrar of Voters, direct the City Attorney to file an action for declaratory relief in the trial court of competent jurisdiction. In filing the action, the City shall seek a judicial determination of whether the City may adjust the compensation of current employees through additional retirement contributions or pay reductions.

BACKGROUND

The City has fairly and fully negotiated the proposed ballot measure over the last 9 months in accordance with governing law, including the *Seal Beach* decision. Throughout that time, the Council has assiduously considered the legal opinions of the City Attorney and outside counsel, and has carefully evaluated the arguments posed by attorneys representing our unions.

The Council has very good reason to believe that the proposed ballot measure will survive a legal challenge. Our unions' attorneys have asserted that the courts will not abide by an approach in which City can prod an employee to make the election to choose a lower tier of benefits, by requiring payment of a larger contribution to the plan if the employee declines to do so. Through the last nine months, we have seen ten of our eleven bargaining units propose voluntary "opt-in" plans with reduced benefits, seemingly conceding the legality of the use of VEP's in the City's current proposal. Three of the unions have proposed to "encourage" that election of a lower tier of benefits by reducing compensation for those who decline to "opt in." Two more unions have even proposed to mandate increasingly severe reductions in pay if a specific percentage of *other employees* in the same bargaining unit decline to choose the alternative tier of benefits. We also know that in the months prior to these negotiations, several unions agreed to increase employee contributions to their unfunded liabilities. Our unions' own actions and proposals appear to validate the lawfulness of the proposed reforms before us.

While I would not be voting to put a measure on the ballot if I did not feel confident of its lawfulness, it is obviously not a view shared by all of my colleagues. I propose that we approve a resolution to ensure that we seek a legal blessing from a state Superior Court or a U.S. District Court immediately upon passage of the measure.

EXHIBIT D

1 JOHN McBRIDE, ESQ., SBN 36458
2 jmcbride@wmpirlaw.com
3 CHRISTOPHER E. PLATTEN, ESQ., SBN 111971
4 cplatten@wmpirlaw.com
5 MARK S. RENNER, ESQ., SBN 121008
6 mrenner@wmpirlaw.com
7 WYLIE, MCBRIDE, PLATTEN & RENNER
8 2125 Canoas Garden Avenue Suite 120
9 San Jose, CA 95125
10 Telephone: 408.979.2920
11 Facsimile: 408.979.2934

12 Attorneys for Defendant
13 San Jose Firefighters, IAFF Local 230

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

16 CITY OF SAN JOSE,

17 Plaintiff,

18 vs.

19 SAN JOSE POLICE OFFICERS'
20 ASSOCIATION; SAN JOSE FIREFIGHTERS,
21 I.A.F.F. LOCAL 230; MUNICIPAL
22 EMPLOYEES' FEDERATION, AFSCME,
23 LOCAL 101; CITY ASSOCIATION OF
24 MANAGEMENT PERSONNEL, IFPTE,
25 LOCAL 21,

26 Defendants.

Case No. C12-02904 LHK PSG

**DECLARATION OF CHRISTOPHER E.
PLATTEN IN SUPPORT OF SAN JOSE
FIREFIGHTERS I.A.F.F. LOCAL 230'S ET
AL., MOTION TO DISMISS**

Date: October 4, 2012
Time: 1:30 p.m.
Ctmm: 8
Judge: Hon. Lucy H. Koh

27 I, Christopher E. Platten, declare:

28 1. I am one of the attorneys for defendants San Jose Firefighters, IAFF Local 230 and City Association of Management Personnel, IFPTE, Local 21. I am also one of the attorneys who filed the lawsuit entitled Sapien, et al v. City of San Jose, et al. on June 7, 2012 (See RJN No. 1). The individual named plaintiffs in that lawsuit are or were members of defendant San Jose Firefighters, IAFF Local 230. We have initiated discovery in these lawsuits.

2. I am also one of the attorneys who filed the lawsuit entitled John Mukhar, et al. v.

1 City of San Jose, et al. (See RJN No. 2), filed on June 16, 2012. The individual plaintiffs in that
2 lawsuit are or were members of and represented by City Association of Management Personnel,
3 IFPTE Local 21, defendant herein.

4 3. I am one of the attorneys who filed the lawsuit entitled Harris, et al. v. City of San
5 Jose (See RJN No. 3). Each of the plaintiffs in that lawsuit are or were employed by the City of San
6 Jose, and are or were members of and represented by Operating Engineers, Local 3, an employee
7 association which has exclusive bargaining rights for its members with the City of San Jose.

8 4. As of the date of this declaration is signed I am informed and believe and thereon
9 declare neither Local 230 nor Local 21 have been served with process in this federal lawsuit.

10 5. Prior to the date the City Council voted to place Measure B on the ballot for the June
11 election in the course of negotiations on behalf of Local 230 and Local 21 with representatives of
12 the City, I repeatedly advised these representatives that provisions of the proposed ballot measure
13 were fatally unconstitutional under both state and federal constitutions.

14 I declare under penalty of perjury that the foregoing is true and correct. Executed on June 26,
15 2012, at San Jose, California.

16
17 /s/ Christopher E. Platten
18 CHRISTOPHER E. PLATTEN

19 I:\0230\72279\pnd\decl platten dismiss.docx
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EXHIBIT E

ASSOCIATION OF BUILDING,
MECHANICAL AND ELECTRICAL
INSPECTORS (ABMEI)



August 30, 2011

VIA EMAIL & HAND DELIVERY

Honorable Mayor and City Council
200 E. Santa Clara Street
San Jose, CA 95113

Dear Mayor Reed and Council Members:

On August 10, 2011, the Legislative Council Bureau issued an opinion clearly stating that the City of San Jose does not have the authority to declare a Fiscal and Public Safety Emergency due to ongoing budget shortfalls. It further stated that charter amendments to limit retirement benefits for current city employees and retirees - as proposed in the July 5, 2011 draft proposed ballot measure - would clearly violate the California and United States Constitutions. This follows a similar opinion released by the State Attorney General's office highlighting the legal weakness of the proposed State of Emergency.

Given the overwhelming evidence that the City of San Jose lacks the legal authority to enact a State of Emergency and pension measures as proposed, we request that you officially withdraw these proposals.

We all recognize the budget challenges facing the City of San Jose, and are united in our commitment to addressing these issues in a constructive, fair, open and legal manner. Our goal is to develop solutions to the budgetary problems facing the city, while simultaneously maintaining vital city services and protecting the rights of the city workforce. As you are aware, we have made substantive proposals to address unfunded pension liabilities, including the development of a 2nd tier for new employees, a cap on total pension payouts, and triggers to increase contribution rates and eliminate some COLA's should funding fall below 75%. These proposals will greatly reduce the volatility of pension funding going forward, and offers a shared sacrifice to ensure a healthy pension plan.

Continued efforts to advocate for proposals that clearly violate the California and United States Constitutions is at best a distraction to developing real and realistic solutions to the budget difficulties, and at worst will result in delay, increased antagonism with your workforce, and costly legal fights at the taxpayers expense. To date, the Legislative Council Bureau has stated your proposals are unconstitutional, the State Attorney General's office has indicated similar concerns, and CalPERS has recently issued a report highlighting the legal protections to which current workers and retirees are entitled. The only legal argument supporting the City proposals comes from a law journal article authored by the same firm currently under contract with the City to conduct labor negotiations.

Should you continue with your advocacy for these suspect proposals, we believe city workers and all San Jose residents deserve an explanation clearly articulating why you believe the Legislative Council, State Attorney General's office and CalPERS opinions are all in error, including your legal justification and citations. Failure to provide such information can only be viewed as indications that these proposals are politically motivated, and evidence that the City is more interested in blaming others for the challenges we face, rather than working together to resolve the budget issues and properly serve all San Jose residents.

We eagerly await your response.

Sincerely,

Tom Brim, President
Association of Building, Mechanical
and Electrical Inspectors (ABMEI)

LaVerne S. Washington, President
Confidential Employees' Organization (CEO),
AFSCME Local 101

Dan Rodriguez, Business Representative
International Brotherhood of
Electrical Workers (IBEW), Local 332

Yolanda A. Cruz, President
Municipal Employees' Organization (MEF),
AFSCME Local 101

William H. Pope, Business Representative

EXHIBIT F

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City of San Jose
9

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

12 CITY OF SAN JOSE,
13 Plaintiff,
14 v.

15 SAN JOSE POLICE OFFICERS'
ASSOCIATION; SAN JOSE FIREFIGHTERS,
16 I.A.F.F. LOCAL 230; MUNICIPAL
EMPLOYEES' FEDERATION, AFSCME,
17 LOCAL NO. 101; CITY ASSOCIATION OF
MANAGEMENT PERSONNEL, IFPTE,
18 LOCAL 21; THE INTERNATIONAL UNION
OF OPERATING ENGINEERS, LOCAL NO.
19 3; and DOES 1-10.

20 Defendants.
21

Case No. 5:12-CV-02904-LHK

**FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

[28 U.S.C. Section 2201(a)]

Complaint Filed: June 5, 2012

Trial Date: None Set

22 **INTRODUCTION**

23 I. This declaratory relief action is brought to resolve a dispute arising under the
24 United States Constitution, including Article 1, § 10 -- the federal "contracts clause" -- and the 5th
25 and 14th Amendments. Under 28 U.S.C. § 1367(a), this Court also has jurisdiction over the state
26 law issues presented by this action, because they are part of the same case or controversy as the
27 federal law issues.
28

1 2. The City of San Jose ("the City") is committed to providing services that are
2 essential to the quality of life and well-being of San Jose residents, including police protection;
3 fire protection; street maintenance; libraries; and community centers ("Essential City Services").

4 3. The City's ability to provide Essential City Services has been and continues to be
5 threatened by dramatic budget cuts caused in large part by the climbing and unsustainable cost of
6 employee benefit programs, exacerbated by the economic crisis. For example, in the last few
7 years, City payments for employee retirement costs have dramatically increased, from \$107
8 million in 2009-10, to \$245 million in 2011-12, and are projected to be \$319 million in 2014-15 –
9 approximately 24% of the City's General Fund. In March 2012, Moody's downgraded San Jose's
10 general obligation and lease revenue bonds, in part because of San Jose's "[i]ncreasing retirement
11 cost burden."

12 4. In this context, the City Council voted to place Measure B on the ballot for the June
13 5, 2012 election. A true and correct copy of Measure B is attached hereto as Exhibit 1.

14 5. Measure B is intended to adjust post-employment benefits in a manner that protects
15 the City's viability and public safety, at the same time allowing for the continuation of fair post-
16 employment benefits for the City's workers. Without the reasonable cost containment provided in
17 Measure B, the economic viability of the City, and hence, the City's employment benefit
18 programs, will be placed at risk.

19 6. An actual controversy has arisen and now exists between the parties relating to the
20 legality of Measure B for which the City desires a declaration of rights. A declaratory judgment is
21 necessary to confirm that Measure B does *not* impair any vested rights, does not violate the
22 contracts clauses contained in the federal and state constitutions, and does not violate federal or
23 state due process guarantees, or any of the other legal rights claimed by defendants. This
24 judgment is necessary because the defendants contend, on behalf of their members, that Measure
25 B contains provisions that violate employee vested rights to certain retirement contributions and
26 benefits and is (all or in part) a violation of the contracts clauses, federal and state due process
27 guarantees, and other laws.
28

1 7. The City contends that Measure B does not violate employee vested rights. San
2 Jose is a Charter City with "plenary authority" to provide in its Charter for the compensation of its
3 employees. The San Jose City Charter reserves the City's right to create and amend the City's
4 retirement plans. The City's Charter and Municipal Code permit modification of employee
5 contribution rates to the City's retirement systems to defray unfunded liabilities as well as the
6 other changes contained in Measure B. City practices confirm this authority. For these reasons,
7 the City has retained the right for the City's voters to make changes to employee contribution rates
8 and to make the other changes contained in Measure B.

9 8. This action does not seek to recover any damages, attorneys' fees or costs against
10 the defendants, or any employees or retirees who may be impacted in this action. This is solely an
11 action for declaratory relief to confirm the legality of Measure B, so that the City can begin
12 implementing its provisions in good faith.

13 9. The City Council reasonably and responsibly anticipated this legal dispute at the
14 time it voted to place Measure B on the ballot, and thus incorporated a grace period into the
15 measure with respect to the increased employee contributions – the component of the Measure
16 with the most direct economic impact on employees. The grace period delays implementation of
17 increased pension contributions (which are an important component of the cost containment/
18 sustainability features in Measure B) until June 23, 2013. This grace period is intended to permit
19 adjudication of the legality of this component of Measure B before it impacts City employees

20 10. To implement Measure B in its entirety, the City must develop administrative
21 procedures and draft implementing ordinances for submission to the City Council. The City must
22 move expeditiously in these efforts, in order to implement the various provisions of Measure B.

23 11. In light of the threat to Essential City Services, the express grace period referenced
24 above, and the need for the City to begin implementation of Measure B, it is urgent that the Court
25 swiftly adjudicate the legality of Measure B. The City asks this Court to place this matter on a
26 preferential and expedited schedule to confirm that the changes enacted in Measure B are lawful,
27 and thus initially resolve the controversy.
28

PARTIES

12. Plaintiff City of San Jose is a California municipal corporation, organized as a Charter City under the California Constitution and laws of the State of California. The City provides its residents with essential services such as police protection, fire and emergency response, libraries, parks and community centers. The City has provided its employees with a generous variety of fringe benefits, including two defined benefit pension plans and retiree health benefits, among other benefits. The City comprises various constituent boards and divisions, including the Boards of Administration for the San Jose Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System.

13. The San Jose Police Officers Association ("SJPOA") is an employee association that represents San Jose's police officers and negotiates with the City over the wages, hours and other terms and conditions of employment for its members. The SJPOA contends that all or part of Measure B violates the vested rights of SJPOA members to certain retirement and other post-employment benefits, and is illegal for other reasons.

14. The San Jose Fire Fighters, I.A.F.F. Local 230 ("Local 230") is an employee association that represents San Jose's firefighters and negotiates with the City over wages, hours and other terms and conditions of employment for its members. Local 230 contends that all or part of Measure B violates the vested rights of Local 230 members to certain retirement and other post-employment benefits.

15. The Municipal Employees Federation ("MEF"), AFSCME, Local 101, is an employee organization that represents a wide range of City employees and negotiates with the City over wages, hours and other terms and conditions of employment for its members. MEF contends that all or part of Measure B violates the vested rights of its members to certain retirement and other post-employment benefits.

16. The City Association of Management Personnel, IFPTE, Local 21 ("CAMP") is an employee organization that represents City management level employees and negotiates with the City over wages, hours and other terms and conditions of employment for its members. CAMP contends that all or part of Measure B violates the vested rights of its members to certain

1 retirement and other post-employment benefits.

2 17. The International Union of Operating Engineers, Local No. 3 ("Local No. 3"), is an
3 employee organization that represents City employees and negotiates with the City over wages,
4 hours and other terms and conditions of employment for its members. Local No. 3 contends that
5 all or part of Measure B violates the vested rights of its members to certain retirement and other
6 post-employment benefits.

7 18. The true names and capacities of defendants sued as DOES 1 through 10 are
8 unknown to Plaintiff. DOES 1 through 10 are named as defendants because Plaintiff is ignorant of
9 the names or identities of other parties who contend that all or part of Measure B violates their
10 vested rights to retirement and other post-employment benefits or is illegal for other reasons.
11 Plaintiff will amend this complaint to identify their names and capacities when Plaintiff becomes
12 aware of them.

13 JURISDICTION AND VENUE

14 19. This Court has subject matter jurisdiction over this matter because one or more of
15 the disputes concerning Measure B arise under the federal Constitution. Further, Plaintiffs'
16 contentions concerning the parallel provisions in the California Constitution arise from the same
17 transactions or occurrences as the federal claims. The Court has personal jurisdiction over the
18 parties because they are located and conduct business in this judicial district and this action arises
19 from conduct occurring in the City of San Jose.

20 20. Venue is proper in this district and this division because the City and Defendants
21 are located in this district and division.

22 INTRADISTRICT ASSIGNMENT

23 21. Plaintiff City of San Jose is located in Santa Clara County. Defendants are
24 employee organizations that represent City of San Jose employees affected by Measure B and on
25 information and belief have offices located in Santa Clara County.

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GENERAL ALLEGATIONS

22. The City of San Jose provides generous retirement and post-employment benefits for its employees. The City provides two defined benefit pension plans for its employees, one for police and fire employees ("Police and Fire Plan"), the other for all other "miscellaneous" employees ("Federated Plan"), described generally as follows. Under the Police and Fire Plan, an employee can retire at age 50 with 25 years of service, at age 55 with 20 years of service, or at any age with 30 years of service. The employee receives 2.5% of final compensation for each of the first 20 years of service. For each year over 20 years, police receive an additional 4%. After 20 years, fire fighters receive 3% for all years of service. Police and fire employees receive monthly payments constituting up to 90% of their final monthly compensation and a yearly COLA of 3% per year.

23. Under the Federated Plan, an employee can retire at age 55 with 5 years of service or at any age with 30 years of service. The employee receives 2.5% of final compensation for each year of service, and receives monthly payments constituting up to 75% of final monthly compensation, and a yearly COLA of 3% per year.

24. The City's yearly cost of pay for employee retirement benefits has dramatically increased, and has thus negatively impacted the City's ability to provide Essential City Services. The increase in pension costs is attributable to enhanced retirement benefits, increased employee salaries, and the downturn in the financial markets.

25. Between Fiscal Years ("FY") 1998-99 to 2009-10, the City's annual contributions for pension and retiree health benefits increased from approximately \$54 million to \$107 million. (City Auditor Report, "Pension Sustainability: Rising Costs Threaten The City's Ability to Maintain Service Levels," pp. 18-22.) For FY 2012-13, the City's annual costs are projected to be \$245 million, with contribution rates of 66% for police and fire and 52% for Federated employees. By FY 2014-15, the City's annual contribution are projected to be \$319 million, with contribution rates of more than 78% of payroll for police and fire and 65% of payroll for Federated employees. (City of San Jose, Future Retirement Costs Study Session, March 29, 2012.)

1 26. Because of rising retirement costs, the City has been forced to lay off employees
2 and reduce services. In the last few years, staffing has been reduced as follows: police officers
3 (22%), fire department (13.5%) (before restoration from federal grants), library staff (26%), and
4 parks and recreation staff (35%). These cuts have resulted in fewer police patrols, an increase in
5 violent crime, and reduced fire, library, parks and other community services. ("Fiscal and Service
6 Level Emergency Report; An Evaluation of Conditions in the City of San Jose," Appendix A –
7 Impacts on Services, pp. 270-271, 289-290, 293, 297, 309-310.)

8 27. On March 6, the City Council voted to call an election on June 5, 2012 "for the
9 purpose of voting on a ballot measure to amend the San Jose City Charter to add a new Article
10 XV-A." As presented to the voters, Measure B reads: "PENSION MODIFICATION. Shall the
11 Charter be amended to modify retirement benefits of City employees and retirees by: increasing
12 employees' contributions, establishing a voluntary reduced pension plan for current employees,
13 establish pension cost and benefit limitations for new employees, modify disability retirement
14 procedures, temporarily suspend retiree COLAs during emergencies, require voter approval for
15 increases in future pension benefits."

16 28. Measure B is entitled "The Sustainable Retirement Benefits and Compensation
17 Act." The "Findings" for the Act state that the City's ability to provide its citizens with "Essential
18 City Services" -- such as police and fire protection, street maintenance and libraries -- is
19 threatened by budget cuts. (Section 1501-A.) The stated "Intent" of the Act is to "ensure the City
20 can provide reasonable and sustainable post-employment benefits while at the same time
21 delivering Essential City Services." (Section 1502-A.)

22 29. Measure B contains the following provisions, among others:

23 A. Employee Contribution Rates (Section 1506-A).

24 Beginning June 23, 2013, the Act requires that the compensation of current employees be
25 adjusted to defray the unfunded liabilities in their pension plans. The Act requires employees to
26 make additional contributions to the retirement system in increments of 4% of pensionable pay per
27 year up to a maximum of 16% of pensionable pay per year, but no more than 50% of the costs per
28 year to amortize any pension plan unfunded liabilities. The adjustments in compensation will be

1 treated as additional retirement contributions to employees' retirement accounts.

2 B. VEP (Section 1507-A).

3 Under the Act, as an alternative to having their pay adjusted, employees may voluntarily
4 opt into a "Voluntary Election Program." Under this program, employees retain their yearly
5 accrual rate for years already served (2.5% per year Federated and 2.5%, 4% Police and Fire),
6 retain their maximum retirement benefit as a percentage of pay (75% Federated, 90% Police and
7 Fire), pay employee contributions based on the existing Charter formula, but do not pay for any
8 unfunded liability.

9 In exchange for no reduction in pay, the VEP provides a different pension plan. The VEP
10 reduces the accrual rate for future service (2% per year), raises the eligibility age for retirement
11 over time (55 to 62 for miscellaneous, 50 to 57 for safety), limits cost of living adjustments to a
12 maximum of 1.5% based on the CPI, and requires "final compensation" to be determined by an
13 average of the three highest years of pay instead of one, among other changes.

14 Implementation of the VEP is contingent upon IRS approval. Unless and until the VEP is
15 implemented, employees are subject to the pay adjustment in Section 1506-A.

16 C. Disability Retirements (Section 1509-A).

17 Under the Act, to receive a disability retirement, City employees "must be incapable of
18 engaging in any gainful employment for the City, but not yet eligible to retire." City employees
19 are considered "disabled" if they "cannot do the work they did before" and "cannot perform any
20 other jobs described in the City's classification plan" or in the case of safety employees, "cannot
21 perform any other jobs described in the City's classification plan in the employee's department."
22 Determinations of disability will be made by an independent panel of medical experts appointed
23 by the City Council, with a right to appeal to an administrative law judge.

24 D. Emergency Measures to Contain Cost of Living Adjustments
25 (Section 1510-A).

26 Under the Act, if the City Council "adopts a resolution declaring a fiscal and service level
27 emergency, with a finding that it is necessary to suspend increases in cost of living payments to
28 retirees," the City may temporarily suspend cost of living adjustments in whole or in part for up to

1 five years.

2 E. Supplemental Payments to Retirees (Section 1511-A).

3 The Act discontinues the Supplemental Retiree Benefit Reserve and returns its assets to the
4 appropriate retirement trust fund. Any supplemental payments to retirees may not be funded from
5 plan assets.

6 F. Retiree Healthcare (Section 1512-A).

7 The Act requires employees to contribute a minimum of 50% of the cost of retiree
8 healthcare, including both normal cost and unfunded liabilities.

9 G. Actuarial Soundness (Section 1513-A).

10 The Act requires that all retirement plans be subject to actuarial analysis before adoption,
11 that all plans be actuarially sound, and articulates broad objectives for the City's retirement
12 boards.

13 H. Savings (Section 1514-A).

14 In the event a court determines that Section 1506-A is illegal, then to the maximum extent
15 permitted by law, an equivalent amount of savings shall be obtained through pay reductions,
16 which shall not exceed 4% per year, capped at a maximum of 16% of pay. The Act includes
17 additional provisions for severance of any provisions that are somehow found unenforceable.

18 I. Future Changes (Sections 1503-A, 1504-A, 1505-A).

19 The Act supersedes all other conflicting or inconsistent "wage, pension or post-
20 employment benefit provisions in the Charter, ordinances, resolutions or other enactments." The
21 Act reserves to the voters the right to consider any change "related to pension and other post-
22 employment benefits." Subject to the limits contained in the Act, the City Council has the
23 authority to take all actions necessary to effectuate the Act, with a goal that implementing
24 ordinances become effective by September 30, 2012. Many of the features of Measure B call for
25 ordinances to implement Measure B's provisions.

**FIRST CAUSE OF ACTION.
(Declaratory Judgment, 28 U.S.C. §2201(a))**

30. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

31. Defendants have asserted that Measure B is illegal under federal and state law. Plaintiff seeks a declaratory judgment that the following provisions of Measure B do not violate: the contracts clause of the United States Constitution, Article I, §10; the contracts clause of the California constitution, Article I, § 9; the takings clause of the 5th amendment to the United States constitution; the takings clause of the California constitution, Article I, 19; the federal due process guarantees of the 5th and 14th amendments to the United States constitution; state due process guarantees of the California constitution, Article I, section 7; the right to petition government under the federal and state constitutions; separation of powers under the California constitution, Article III, section 3; breach of contract; violation of the Meyers-Milias-Brown Act, California Government Code section 3500 et seq.; promissory estoppel; and violation of the California Pension Protection Act, California constitution, Article XVI, section 17:

- A. Section 1506-A, Employee contribution rates.
- B. Section 1507-A, Voluntary election program ("VEP").
- C. Section 1509-A, Disability retirement.
- D. Section 1510-A, Emergency measure to contain COLAs.
- E. Section 1511-A, Supplemental retiree benefit reserve.
- F. Section 1512-A, Employee contributions towards retiree healthcare.
- G. Section 1513-A, Actuarial soundness.
- H. Section 1514-A, Savings through compensation adjustment.
- I. Sections 1503-A, 1504-A, 1505-A, Limits on future changes to retirement benefits.

32. An actual controversy over the legality of Measure B has arisen between the City and Defendants. The City contends that the employee compensation, contributions and benefits affected by Measure B are not vested contractual rights under the City's Charter, Municipal Code

1 and past practices, and that each and every provision of Measure B is authorized under federal and
2 state law. Defendants contend that some or all of the employee compensation, contributions and
3 benefits affected by Measure B are vested contractual rights and that parts or all of Measure B
4 violate their constitutional and other rights.

5 33. A judicial decision is necessary to determine whether Measure B can be
6 implemented to change the benefits addressed in the Measure. The decision is urgently needed
7 because the Measure provides that employees will begin paying the increased contribution rate as
8 of June 23, 2013, and because if the Measure is invalidated, the City must move quickly to reduce
9 personnel costs by other methods such as layoffs and further reductions in services.

10 34. This suit seeks this Court's ruling declaring that the City may implement Measure
11 B.

12 **PRAYER**

13 WHEREFORE, Plaintiff City of San Jose prays for relief as follows:

- 14 1. For a judicial declaration under 28 U.S.C. § 2201(a) (The Declaratory
15 Relief Act) that Measure B does not violate the contract clauses of the
16 federal or state constitutions, the takings clause of the federal and state
17 constitutions, federal or state constitutional rights to due process, the right
18 to petition government, separation of powers, the Meyers-Milias-Brown
19 Act, promissory estoppel, or the California Pension Protection Act, does not
20 breach any contracts between the City and its current and former
21 employees, and does not impair any vested rights of the City's current and
22 former employees; and
23
24
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- 1 2. For a judicial declaration that the City may implement Measure B as
2 enacted by the voters.
3

4 DATED: July 2, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

6 By: /s/

7 Arthur A. Hartinger
8 Attorneys for Plaintiff
 City of San Jose

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EXHIBIT G

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10 Attorneys for Defendant
11 City Association of Management
12 Personnel, IFPTE Local 21

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 CITY OF SAN JOSE,

17 Plaintiff,

18 vs.

19 SAN JOSE POLICE OFFICERS'
20 ASSOCIATION; SAN JOSE FIREFIGHTERS,
21 I.A.F.F. LOCAL 230; MUNICIPAL
22 EMPLOYEES' FEDERATION, AFSCME,
23 LOCAL 101; CITY ASSOCIATION OF
24 MANAGEMENT PERSONNEL, IFPTE,
25 LOCAL 21; THE INTERNATIONAL UNION
26 OF OPERATING ENGINEERS, LOCAL NO.
27 3; and DOES 1-10.

28 Defendant.

Case No. C12-02904 LHK PSG

**DEFENDANT CITY ASSOCIATION OF
MANAGEMENT PERSONNEL, IFPTE
LOCAL 21's ANSWER TO FIRST
AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

22 Defendant City Association of Management Personnel, IFPTE Local 21 answers the
23 Amended Complaint on file herein as follows:

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25 ///

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1 1. In answer to paragraph 2, Defendant denies that the City of San Jose is committed to
2 providing services that are essential to the quality of life and well-being but admits that the City of
3 San Jose is required to provide such services.

4 2. In answer to paragraph 3, based on the economic recession commencing in 2008 and
5 its after effects, Defendant is informed and believes, and upon such information and belief, denies
6 that the City's ability to provide Essential City Services has been and continues to be threatened by
7 dramatic budget cuts caused in large part by the climbing and unsustainable cost of employee
8 benefit programs. Defendant is without sufficient information to either admit or deny that in the last
9 few years, City payments for employee retirement costs have dramatically increased, and on that
10 basis denies that allegation. Defendant is without sufficient information to either admit or deny that
11 in March, 2012 Moody's downgraded San Jose's general obligation and lease revenue bonds, in part
12 because of San Jose's "[i]ncreasing retirement cost burden," and on that basis denies that allegation.

13 3. In answer to paragraph 4, this answering Defendant admits that City Council voted to
14 place Measure B on the June 5, 2012 ballot and that Exhibit 1 is a true and correct copy of said
15 Measure and denies the balance of the allegations of said paragraph.

16 4. This answering Defendant denies the allegations of paragraph 5.

17 5. This answering Defendant admits to allegations contained paragraph 6.

18 6. In answer to paragraph 7, this answering Defendant admits the allegation contained
19 in the first sentence of said paragraph and with this exception, denies each and every other allegation
20 contained therein.

21 7. This answering Defendant admits the allegations contained in paragraph 8.

22 8. In answer to paragraph 9, this answering Defendant denies that the City Council
23 acted reasonably or responsibly. In answer to the balance of the allegations contained in paragraph
24 9, this answering Defendant does not have sufficient information or belief concerning the intent of
25 the City Council and on that basis denies the balance of paragraph 9.

26 9. This answering Defendant admits the allegations contained in paragraph 10.

27 10. In answer to paragraph 11, this answering Defendant denies the existence of a "threat
28 to Essential City Services" and denies the need for preferential and/or expedited schedule and with

1 these exceptions, admits the balance of the allegations in paragraph 11.

2 11. In answer to paragraph 12, this answering Defendant denies that the San Jose Police
3 and Fire Department Retirement Plan and the Federated City Employees' Retirement System or the
4 Boards of Administration thereof are constituent boards or divisions of the City of San Jose and with
5 these exceptions, admits the balance of the allegations contained in paragraph 12.

6 12. This answering Defendant admits the allegations contained in paragraphs 13, 14, 15,
7 16, 17, 19, 20, 21, 22 and 23.

8 13. In answer to paragraph 24, this answering Defendant is without sufficient
9 information to either admit or deny that the City's yearly cost of pay for employee retirement
10 benefits has dramatically increased, and has thus negatively impacted the City's ability to provide
11 Essential City Services and on that basis, denies that allegation. Based on the economic recession
12 commencing in 2008 and its after effects, Defendant is informed and believes, and upon such
13 information and belief, denies that the increase in pension costs is attributable to enhanced
14 retirement benefits and increased employee salaries, but admits that the increase in unfunded
15 actuarially accrued liability pension costs is attributable to the downturn in financial markets.

16 14. In answer to paragraph 25, this answering Defendant admits that the City Auditor
17 Report, "Pension Sustainability: Rising Costs Threaten The City's Ability to Maintain Service
18 Levels," pp.18-22 purports to set out the City's annual contributions between Fiscal Years 1998-99
19 and 2009-10, however, Defendant is without sufficient information to either admit or deny the
20 accuracy of these figures, and on that basis denies the allegation. Based on statements contained in
21 the Mayor's June 14, 2011 Budget Message, the Defendant is informed and believes, and on that
22 basis denies the remaining allegations in paragraph 25.

23 15. In answer to paragraph 26, based on the economic recession commencing in 2008
24 and its after effects, Defendant is informed and believes, and upon such information and belief,
25 denies that the City has been forced to lay off employees and reduce services because of rising
26 retirement costs. Defendant is without sufficient information to either admit or deny the remaining
27 allegations in paragraph 26, and on that basis denies the allegations.

28 \\\

1 16. This answering Defendant admits the allegations contained in paragraphs 27, 28, 29,
2 30, 31 and 32.

3 17. This answering Defendant denies the allegations contained in paragraph 33.
4

5 **AFFIRMATIVE DEFENSES**

6 As an for affirmative defenses Defendant alleges:
7

8 **First Affirmative Defense**

9 That this action for declaratory relief is unwarranted and unnecessary due to the multiple
10 actions pending in the Santa Clara County Superior Court in which the constitutionality of Measure
11 B will be judicially determined.

12 **Second Affirmative Defense**

13 That this court should exercise its discretion and refuse to entertain this action brought under
14 28 U.S.C. §2201(a).

15 **Third Affirmative Defense**

16 That the complaint herein seeks an advisory opinion, only, which fails to state a cause of
17 action under 28 U.S.C. §220 (a).

18 **Fourth Affirmative Defense**

19 That this action should be barred by the doctrine of unclean hands because of the City's
20 conduct in failing to make required contributions to the Retirement Plans and unduly influencing the
21 Boards of Administration of the Retirement Plans resulting in actuarially unsound retirement plans
22 which caused any threat to any ability of the City to essential services (if any exists).

23 **Fifth Affirmative Defense**

24 That there are pending state court actions: Robert Sapient, et al. v. City of San Jose, Case No.
25 112CV225928; San Jose Police Officers' Association v. City of San Jose, Case No. 112CV225926;
26 Tercsa Harris, et al. v. City of San Jose, Case No. 112CV226570; John Mukhar, et al. v. City of San
27 Jose, Case No. 112CV226574; and American Federation of State, County and Municipal
28 Employees, Local 101 v. City of San Jose, Case No. 112CV227864, in which the same state

1 constitutional issues are joined and in which the federal constitutional issues can be decided;
2 therefore, this action should be dismissed or stayed until final resolution of the state court
3 proceedings.

4
5 Dated: July 20, 2012

WYLIE, McBRIDE,
PLATTEN & RENNER

6
7 /s/ John McBride

JOHN McBRIDE
Attorneys for Defendant
8 CITY ASSOCIATION OF MANAGEMENT
9 PERSONNEL, IFPTE LOCAL 21

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EXHIBIT H

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11 The International Union of Operating Engineers,
12 Local No. 3

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN JOSE DIVISION

16 CITY OF SAN JOSE,

17 Plaintiff,

18 vs.

19 SAN JOSE POLICE OFFICERS'
20 ASSOCIATION; SAN JOSE FIREFIGHTERS,
21 I.A.F.F. LOCAL 230; MUNICIPAL
22 EMPLOYEES' FEDERATION, AFSCME,
23 LOCAL 101; CITY ASSOCIATION OF
24 MANAGEMENT PERSONNEL, IFPTE,
25 LOCAL 21; THE INTERNATIONAL UNION
26 OF OPERATING ENGINEERS, LOCAL NO.
27 3; and DOES 1-10.

28 Defendant.

Case No. C12-02904 LHK PSG

**DEFENDANT THE INTERNATIONAL
UNION OF OPERATING ENGINEERS,
LOCAL NO. 3'S ANSWER TO FIRST
AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

22 Defendant The International Union of Operating Engineers, Local No. 3 answers the
23 Amended Complaint on file herein as follows:

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28

1 1. In answer to paragraph 2, Defendant denies that the City of San Jose is committed to
2 providing services that are essential to the quality of life and well-being but admits that the City of
3 San Jose is required to provide such services.

4 2. In answer to paragraph 3, based on the economic recession commencing in 2008 and
5 its after effects, Defendant is informed and believes, and upon such information and belief, denies
6 that the City's ability to provide Essential City Services has been and continues to be threatened by
7 dramatic budget cuts caused in large part by the climbing and unsustainable cost of employee
8 benefit programs. Defendant is without sufficient information to either admit or deny that in the last
9 few years, City payments for employee retirement costs have dramatically increased, and on that
10 basis denies that allegation. Defendant is without sufficient information to either admit or deny that
11 in March, 2012 Moody's downgraded San Jose's general obligation and lease revenue bonds, in part
12 because of San Jose's "[i]ncreasing retirement cost burden," and on that basis denies that allegation.

13 3. In answer to paragraph 4, this answering Defendant admits that City Council voted to
14 place Measure B on the June 5, 2012 ballot and that Exhibit 1 is a true and correct copy of said
15 Measure and denies the balance of the allegations of said paragraph.

16 4. This answering Defendant denies the allegations of paragraph 5.

17 5. This answering Defendant admits to allegations contained paragraph 6.

18 6. In answer to paragraph 7, this answering Defendant admits the allegation contained
19 in the first sentence of said paragraph and with this exception, denies each and every other allegation
20 contained therein.

21 7. This answering Defendant admits the allegations contained in paragraph 8.

22 8. In answer to paragraph 9, this answering Defendant denies that the City Council
23 acted reasonably or responsibly. In answer to the balance of the allegations contained in paragraph
24 9, this answering Defendant does not have sufficient information or belief concerning the intent of
25 the City Council and on that basis denies the balance of paragraph 9.

26 9. This answering Defendant admits the allegations contained in paragraph 10.

27 10. In answer to paragraph 11, this answering Defendant denies the existence of a "threat
28 to Essential City Services" and denies the need for preferential and/or expedited schedule and with

1 these exceptions, admits the balance of the allegations in paragraph 11.

2 11. In answer to paragraph 12, this answering Defendant denies that the San Jose Police
3 and Fire Department Retirement Plan and the Federated City Employees' Retirement System or the
4 Boards of Administration thereof are constituent boards or divisions of the City of San Jose and with
5 these exceptions, admits the balance of the allegations contained in paragraph 12.

6 12. This answering Defendant admits the allegations contained in paragraphs 13, 14, 15,
7 16, 17, 19, 20, 21, 22 and 23.

8 13. In answer to paragraph 24, this answering Defendant is without sufficient
9 information to either admit or deny that the City's yearly cost of pay for employee retirement
10 benefits has dramatically increased, and has thus negatively impacted the City's ability to provide
11 Essential City Services and on that basis, denies that allegation. Based on the economic recession
12 commencing in 2008 and its after effects, Defendant is informed and believes, and upon such
13 information and belief, denies that the increase in pension costs is attributable to enhanced
14 retirement benefits and increased employee salaries, but admits that the increase in unfunded
15 actuarially accrued liability pension costs is attributable to the downturn in financial markets.

16 14. In answer to paragraph 25, this answering Defendant admits that the City Auditor
17 Report, "Pension Sustainability: Rising Costs Threaten The City's Ability to Maintain Service
18 Levels," pp.18-22 purports to set out the City's annual contributions between Fiscal Years 1998-99
19 and 2009-10, however, Defendant is without sufficient information to either admit or deny the
20 accuracy of these figures, and on that basis denies the allegation. Based on statements contained in
21 the Mayor's June 14, 2011 Budget Message, the Defendant is informed and believes, and on that
22 basis denies the remaining allegations in paragraph 25.

23 15. In answer to paragraph 26, based on the economic recession commencing in 2008
24 and its after effects, Defendant is informed and believes, and upon such information and belief,
25 denies that the City has been forced to lay off employees and reduce services because of rising
26 retirement costs. Defendant is without sufficient information to either admit or deny the remaining
27 allegations in paragraph 26, and on that basis denies the allegations.

28 \\\

1 16. This answering Defendant admits the allegations contained in paragraphs 27, 28, 29,
2 30, 31 and 32.

3 17. This answering Defendant denies the allegations contained in paragraph 33.
4

5 **AFFIRMATIVE DEFENSES**

6 As an for affirmative defenses Defendant alleges:
7

8 **First Affirmative Defense**

9 That this action for declaratory relief is unwarranted and unnecessary due to the multiple
10 actions pending in the Santa Clara County Superior Court in which the constitutionality of Measure
11 B will be judicially determined.

12 **Second Affirmative Defense**

13 That this court should exercise its discretion and refuse to entertain this action brought under
14 28 U.S.C. §2201(a).

15 **Third Affirmative Defense**

16 That the complaint herein seeks an advisory opinion, only, which fails to state a cause of
17 action under 28 U.S.C. §220 (a).

18 **Fourth Affirmative Defense**

19 That this action should be barred by the doctrine of unclean hands because of the City's
20 conduct in failing to make required contributions to the Retirement Plans and unduly influencing the
21 Boards of Administration of the Retirement Plans resulting in actuarially unsound retirement plans
22 which caused any threat to any ability of the City to essential services (if any exists).

23 **Fifth Affirmative Defense**

24 That there are pending state court actions: Robert Sapien, et al. v. City of San José, Case No.
25 112CV225928; San Jose Police Officers' Association v. City of San Jose, Case No. 112CV225926;
26 Teresa Harris, et al. v. City of San Jose, Case No. 112CV226570; John Mukhar, et al. v. City of San
27 Jose, Case No. 112CV226574; and American Federation of State, County and Municipal
28 Employees, Local 101 v. City of San Jose, Case No. 112CV227864, in which the same state

1 constitutional issues are joined and in which the federal constitutional issues can be decided;
2 therefore, this action should be dismissed or stayed until final resolution of the state court
3 proceedings.

4
5 Dated: July 20, 2012

WYLIE, McBRIDE,
PLATTEN & RENNER

6
7 /s/ John McBride

JOHN McBRIDE
Attorneys for Defendant
8 THE INTERNATIONAL UNION OF OPERATING
9 ENGINEERS, LOCAL NO. 3

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EXHIBIT I

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11 Attorneys for Defendant
12 San Jose Firefighters, I.A.F.F. Local 230

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 CITY OF SAN JOSE,

13 Plaintiff,

14 vs.

15 SAN JOSE POLICE OFFICERS'
16 ASSOCIATION; SAN JOSE FIREFIGHTERS,
17 I.A.F.F. LOCAL 230; MUNICIPAL
18 EMPLOYEES' FEDERATION, AFSCME,
19 LOCAL 101; CITY ASSOCIATION OF
20 MANAGEMENT PERSONNEL, IFPTE,
21 LOCAL 21; THE INTERNATIONAL UNION
OF OPERATING ENGINEERS, LOCAL NO.
3; and DOES 1-10.

Defendant.

Case No. C12-02904 LHK PSG

**DEFENDANT SAN JOSE FIREFIGHTERS,
I.A.F.F. LOCAL 230's ANSWER TO FIRST
AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

22 Defendant San Jose Firefighters, I.A.F.F. Local 230 answers the Amended Complaint on file
23 herein as follows:

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1 1. In answer to paragraph 2, Defendant denies that the City of San Jose is committed to
2 providing services that are essential to the quality of life and well-being but admits that the City of
3 San Jose is required to provide such services.

4 2. In answer to paragraph 3, based on the economic recession commencing in 2008 and
5 its after effects, Defendant is informed and believes, and upon such information and belief, denies
6 that the City's ability to provide Essential City Services has been and continues to be threatened by
7 dramatic budget cuts caused in large part by the climbing and unsustainable cost of employee
8 benefit programs. Defendant is without sufficient information to either admit or deny that in the last
9 few years, City payments for employee retirement costs have dramatically increased, and on that
10 basis denies that allegation. Defendant is without sufficient information to either admit or deny that
11 in March, 2012 Moody's downgraded San Jose's general obligation and lease revenue bonds, in part
12 because of San Jose's "[i]ncreasing retirement cost burden," and on that basis denies that allegation.

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14 place Measure B on the June 5, 2012 ballot and that Exhibit 1 is a true and correct copy of said
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17 5. This answering Defendant admits to allegations contained paragraph 6.

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19 in the first sentence of said paragraph and with this exception, denies each and every other allegation
20 contained therein.

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10 benefits has dramatically increased, and has thus negatively impacted the City's ability to provide
11 Essential City Services and on that basis, denies that allegation. Based on the economic recession
12 commencing in 2008 and its after effects, Defendant is informed and believes, and upon such
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15 actuarially accrued liability pension costs is attributable to the downturn in financial markets.

16 14. In answer to paragraph 25, this answering Defendant admits that the City Auditor
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18 Levels," pp.18-22 purports to set out the City's annual contributions between Fiscal Years 1998-99
19 and 2009-10, however, Defendant is without sufficient information to either admit or deny the
20 accuracy of these figures, and on that basis denies the allegation. Based on statements contained in
21 the Mayor's June 14, 2011 Budget Message, the Defendant is informed and believes, and on that
22 basis denies the remaining allegations in paragraph 25.

23 15. In answer to paragraph 26, based on the economic recession commencing in 2008
24 and its after effects, Defendant is informed and believes, and upon such information and belief,
25 denies that the City has been forced to lay off employees and reduce services because of rising
26 retirement costs. Defendant is without sufficient information to either admit or deny the remaining
27 allegations in paragraph 26, and on that basis denies the allegations.

28 \\\

1 16. This answering Defendant admits the allegations contained in paragraphs 27, 28, 29,
2 30, 31 and 32.

3 17. This answering Defendant denies the allegations contained in paragraph 33.
4

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7

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9 That this action for declaratory relief is unwarranted and unnecessary due to the multiple
10 actions pending in the Santa Clara County Superior Court in which the constitutionality of Measure
11 B will be judicially determined.

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13 That this court should exercise its discretion and refuse to entertain this action brought under
14 28 U.S.C. §2201(a).

15 **Third Affirmative Defense**

16 That the complaint herein seeks an advisory opinion, only, which fails to state a cause of
17 action under 28 U.S.C. §220 (a).

18 **Fourth Affirmative Defense**

19 That this action should be barred by the doctrine of unclean hands because of the City's
20 conduct in failing to make required contributions to the Retirement Plans and unduly influencing the
21 Boards of Administration of the Retirement Plans resulting in actuarially unsound retirement plans
22 which caused any threat to any ability of the City to essential services (if any exists).

23 **Fifth Affirmative Defense**

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25 112CV225928; San Jose Police Officers' Association v. City of San Jose, Case No. 112CV225926;
26 Teresa Harris, et al. v. City of San Jose, Case No. 112CV226570; John Mukhar, et al. v. City of San
27 Jose, Case No. 112CV226574; and American Federation of State, County and Municipal
28 Employees, Local 101 v. City of San Jose, Case No. 112CV227864, in which the same state

1 constitutional issues are joined and in which the federal constitutional issues can be decided;
2 therefore, this action should be dismissed or stayed until final resolution of the state court
3 proceedings.

4
5 Dated: July 20, 2012

WYLIE, McBRIDE,
PLATTEN & RENNER

6
7 /s/ John McBride

JOHN McBRIDE
Attorneys for Defendant
8 SAN JOSE FIREFIGHTERS I.A.F.F., LOCAL 230

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EXHIBIT J

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Attorney for Defendant
San Jose Firefighters, IAFF Local 230

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

12 CITY OF SAN JOSE,

13 Plaintiff,

14 vs.

15 SAN JOSE POLICE OFFICERS'
16 ASSOCIATION; SAN JOSE FIREFIGHTERS,
17 I.A.F.F. LOCAL 230; MUNICIPAL
EMPLOYEES' FEDERATION, AFSCME,
18 LOCAL 101; CITY ASSOCIATION OF
MANAGEMENT PERSONNEL, IFPTE,
19 LOCAL 21,

20 Defendants.

Case No. C12-02904 LHK PSG

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS

Date: October 4, 2012
Time: 1:30 p.m.
Ctm: 8
Judge: Hon. Lucy H. Koh

21 INTRODUCTION

22 By this motion defendants seek an order either dismissing or staying this action on the
23 principals set forth in *Younger v. Harris*, 401 U.S. 37 (1971) as well as this court's broad discretion
24 to refuse to entertain an action for relief under the Declaratory Relief Act, as discussed and
25 explained by the United States Supreme Court in *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995).

26 Claiming it faces an economic crisis the City Council of the City of San Jose (City) voted to
27 place Measure B on the ballot for the June 5, 2012 election. Measure B proposed amendments to the
28

1 San Jose City Charter making significant changes in the pension and medical benefits for existing
2 and retired employees of the City. These changes effect amendments to the City's two retirement
3 plans: The 1961 San Jose Police and Retirement Plan and the 1975 Federated City Employee
4 Retirement Plan. Representatives of the various employee associations representing the current
5 employees warned the City Council that the proposed amendments impaired vested contractual
6 rights of both current and retired employees, to no avail.

7 In a blatant exercise of forum shopping, the City filed this action on June 5, 2012, before the
8 results of the election were known. Measure B was approved by the voters. In this action the City
9 seeks a judgment pursuant to the Declaratory Relief Act, 28 U.S.C. §2201(a), declaring that
10 Measure B passes muster under both the United States and the California Constitutions.

11 There are presently pending in Santa Clara Superior Court three separate lawsuits in which
12 individual current and retired employees who are or were before retirement represented by either
13 San Jose Firefighters, IAFF Local 230 (Local 230) (a defendant herein), City Association of
14 Management Personnel, IFPTE, Local 21 (Local 21) (a defendant herein), or Operating Engineers,
15 Local 3 (OE 3) (not a defendant herein). See Request For Judicial Notice (hereinafter RJN) Numbers
16 1, 2 and 3. These lawsuits were filed June 6, 2012, June 15, 2012 and June 15, 2012, respectively.
17 Each of these lawsuits name the City as the primary defendant. Each of these lawsuits name as a
18 Necessary Party in Interest the Boards of Administration for the respective Retirement Plans. The
19 relief sought in each of these state court actions includes a declaratory judgment that the charter
20 amendments enacted as a result of the passage of Measure B violate various provisions of the
21 California and Federal Constitutions because the measure impairs vested contractual rights of the
22 current and retired employees. Although the plaintiffs in the state court actions include parties not
23 named in the City's lawsuit the fundamental issues are identical, to wit, the constitutionality of the
24 charter amendments. A fourth state court action filed by the San Jose Police Officers Association (a
25 defendant herein) filed June 6, 2012, names both the City of San Jose and the Board of
26 Administration for Police and Fire Department Retirement Plan of City of San Jose as defendants.
27 (RJN No. 4) This lawsuit also seeks declaratory relief and injunctive relief to declare the provisions
28 of Measure B unconstitutional under the California Constitution and to enjoin implementation

1 thereof.

2 ARGUMENT

3 A. Authority For A Motion To Dismiss.

4 The Ninth Circuit Court of Appeals has held that a motion to dismiss for reasons not
5 enumerated in FRCP 12(b) may be presented and such motions are subject to regular motion
6 preceding. *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003); *Ritza v. International*
7 *Longshoremen's & Warehousemen's Union*, 837 F.2d 365, 369 (9th Cir. 1988). Here, given the
8 purpose of the motion as set forth below it is appropriate for this court to address the abstention
9 and/or refusal to proceed as early as possible.

10 B. This Matter Must Be Dismissed or Stayed Under The Younger Abstention Doctrine.

11 In *Younger v. Harris, supra*, the court held that when there is a pending state court action in
12 which constitutional issues are present, or could be raised in that proceeding, a district court should
13 dismiss a federal lawsuit involving those same issues unless there are extraordinary circumstances
14 and provided the state court can adequately resolve the federal constitutional issues. 401 U.S. 37,
15 53-54. This decision was based upon the established public policy against federal court interference
16 with state court proceedings.

17 "This underlying reason for restraining courts of equity from
18 interfering with criminal prosecutions is reinforced by an even more
19 vital consideration, the notion of 'comity,' that is, a proper respect
20 for state functions, a recognition of the fact that the entire country is
21 made up of a Union of separate governments and a continuance of
22 the belief that the National Government will fare best if the States
23 and their institutions are left free to perform their separate functions
24 in their separate ways." 401 U.S. 44.

22 While *Younger* involved a lawsuit seeking to enjoin a state court criminal prosecution, the
23 principles set forth are applicable where there is a pending state court civil action and where the
24 federal suit seeks declaratory relief. *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1 (1987).

25 As the court explained:

26 Another important reasons for abstention is to avoid unwarranted
27 determination of federal constitutional questions. When federal
28 courts interpret state statutes in a way that raises federal
constitutional questions, "a constitutional determination is
predicated on a reading of the statute that is not binding on state

1 courts and may be discredited at any time – thus essentially
2 rendering the federal – court decision advisory and the litigation
underlying it meaningless. 481 U.S. 11

3 Although in *Younger*, the state proceeding was pending when the lawsuit for injunctive relief
4 was filed in federal court, the date of filing is not determinative. The focus is on whether any
5 substantive action has taken place in the district court action. *Hicks v. Miranda*, 422 U.S. 332, 349
6 (1975).

7 “Neither *Steffel v. Thompson*, 415 U.S. 452, 94 S.Ct. 1209, 39
8 L.Ed.2d 505 (1974), nor any other case in this Court has held that
9 for *Younger v. Harris* to apply, the state criminal proceedings must
10 be pending on the day the federal case is filed. Indeed the issue has
11 been left open; and we now hold that where state criminal
proceedings are begun against the federal plaintiffs after the federal
complaint is filed but before any proceedings of substance on the
merits have taken place in the federal court, the principles of
Younger v. Harris should apply in full force.” 422 U.S. 349

12 The underlying principal in the *Younger* abstention doctrine is that federal courts should
13 maintain respect for state functions and not unduly interfere with the states good faith efforts to
14 enforce its own laws in its own courts. *Younger*, 401 U.S. 43-44.

15 Here the City seeks to obtain a judgment in the district court that the amendments to the City
16 Charter authorized by passage of Measure B *do not* violate provisions of the California and Federal
17 Constitutions. The state court actions are mirror images of the City’s lawsuit; i.e., the state court
18 actions allege and seek a judicial declaration that these amendments *do* violate both the California
19 and Federal Constitutions. (RJN No. 1, pgs. 10, 11, & 12; No. 2, pgs. 9, 10 & 11; No. 3, pgs. 9, 10 &
20 11; and No. 4, pgs. 17-19)

21 The state courts have a longstanding history of adjudicating public employee benefit rights in
22 the face of a public employer’s attempted intrusion. See for example: *Kern v. City of Long Beach*,
23 29 Cal.2d 848 (1947) (public employee pension rights are vested); *Allen v. City of Long Beach*, 45
24 Cal.2d 128 (1955) (determining constitutional limits on modifying public employee pension rights);
25 *Betts v. Board of Administration of the Public Employees’ Retirement System*, 21 Cal.3d 859 (1978)
26 (determining constitutional limits on modifying public employee pension rights); *Pasadena Police*
27 *Officers Association v. City of Pasadena*, 147 Cal.App.3d 695 (1983) (determining amendments
28

1 limiting future pension benefits unconstitutionally impaired active and retired employees vested
2 contractual rights). *Orange County Employees Association, Inc. v. County of Orange*, 234
3 Cal.App.3d 833 (1991) (determining right of retirees to health benefits). This long history includes
4 determination of vested employment rights under both the state and federal constitution. To allow
5 the City to proceed in federal court would unduly interfere with the pending state court proceedings
6 contrary to the holding of *Younger*.

7 There can be no argument that the state court cannot adequately resolve all of the issues
8 presented in the City's complaint for declaratory judgment. The California courts have dealt with
9 these constitutional issues as noted above and comity "precludes any presumption that the state
10 courts will not safeguard federal constitutional rights." *Middlesex County Ethics Committee v.*
11 *Garden State Bar Assn*, 457 U.S. 423, 431 (1982). Indeed the Ninth Circuit Court of Appeals
12 recently deferred to the California Supreme Court for clarification of public employee retirement
13 health benefits. *Retired Employees Association of Orange County, Inc. v. County of Orange*, 52
14 Cal.4th 1171 (2011).

15 There are no extraordinary circumstances that would justify interference by the district court
16 with the pending state court proceedings. Although solely by reason of its premature filing of the
17 complaint before Measure B became law, the City's complaint was first (by one day) to be filed, that
18 is of no consequence. The decisive consideration is not the date of filing, but whether there have
19 been any proceedings of consequence in the district court. *Hicks, supra*, 422 U.S. 332, 349. Indeed
20 at this time at least two of the defendants in the City's lawsuit have been served. By way of contrast
21 the City has been served in the Sapien, et al, Mukhar, et al. and Harris et al. and discovery has
22 commenced. (See RJN Nos. 5, 6 & 7 and Decl. of Christopher E. Platten)

23 There are other facts and circumstances which support abstention. Foremost is the fact that
24 the City chose not to include the Boards of Administration of the two retirement plans as parties to
25 the action. The Boards of the City's two Retirement Plans are independent entities which have
26 independent fiduciary duties to administer the Plans consistent with the constitutional rights of the
27 participants and beneficiaries. Cal. Const. Art. XVI §17. As such, these Boards have a direct
28 interest in the proper judicial determination of the important constitutional issues raised in this

1 action and the state actions where they are already joined as Necessary Partners in Interest

2 Further, if this federal court action were to proceed it would be necessary and appropriate to
3 join herein the parties and the allegations in the state court actions which would further involve this
4 court in matters which are of great importance to the state and traditionally dealt with in the state
5 judicial and/or administrative systems.

6 Based on the foregoing and following the dictates of *Younger, et al.*, this court must abstain
7 and either dismiss this proceeding outright or stay it pending conclusion of the state court
8 proceedings.

9 **C. This Court Should Decline To Entertain This Action For Declaratory Relief.**

10 The City's complaint filed on June 5, 2012 contains but one cause of action. It seeks a
11 declaratory judgment that Measure B is constitutional under the Federal and California
12 Constitutions. The relief is sought pursuant to the Declaratory Relief Act.

13 Relying on *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942), the Supreme Court
14 in *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995) held that the Declaratory Judgment Act was an
15 enabling act giving the district court broad discretion to undertake, or not, a declaratory relief action.
16 *Wilton*, 515 U.S. 288.

17 "By the Declaratory Judgment Act, the Congress sought to place a
18 remedial arrow in the district court's quiver; it created an
19 opportunity, rather than a duty to grant a new form of relief to
20 qualifying litigants. Consistent with the nonobligatory nature of the
21 remedy, a district court is authorized, in the sound exercise of its
22 discretion, to stay or to dismiss an action seeking a declaratory
23 judgment before trial or after all arguments have drawn to a close. In
24 the declaratory judgment context, the normal principle that federal
25 courts should adjudicate claims within their jurisdiction yields to
26 considerations of practicality and wise judicial administration." 515
27 U.S. 288.

28 The court in *Wilton* granted certiorari to resolve circuit court conflict over whether the
restrictive standards for abstention set forth in the Colorado River case¹ applied to actions brought
under the Declaratory Judgment Act. *Wilton, supra*, 515 U.S. 281. It held those restrictive standards
did not apply. *Id.* at 286.

¹ *Colorado River Water Conservation Dist. v. United States* 424 U.S. 800 (1976)

1 The court noted that *Brillhart* "makes clear that the district court possesses broad discretion
2 in determining whether and when to entertain an action under the Declaratory Judgment Act, even
3 when the suit otherwise satisfies subject matter jurisdiction prerequisites." *Id.*, 515 U.S. 282.

4 In exercising this broad discretion the district court must examine the scope of the pending
5 court proceedings, consider whether the claims of all of the parties can be adjudicated and whether
6 necessary parties have been joined. *Id.* 515 U.S. 283.

7 Here if anything the scope of the state court proceedings are more far reaching than that of
8 the City's complaint. Here, although the parties in two of the state actions are not the identical to the
9 parties in this action; they are aligned. The plaintiffs in *Sapien, et al.* are current and retired
10 firefighters who are or were currently represented by defendant Local 230. The plaintiffs in the
11 *Mukhar* are current or retired employees of the City and are or were represented by Local 21. This
12 action fails to include Local 3 and/or its members who are the plaintiffs in the *Harris et al.* action.
13 This action also does not include the Boards of Administration of the two retirement plans,
14 necessary parties of interest. As a result the claims of all the parties can best be adjudicated in the
15 state court actions.

16 This court should also consider the status of the proceedings. Although prematurely filed one
17 day before the *Sapien, et al. v. City* lawsuit – this federal action has not progressed (at least 2
18 defendants have yet to be served) nor have there been any proceedings of substance.

19 The court in *Wilton* noted various factors to be considered by the court. These included the
20 existence of another lawsuit involving the same parties which provides the opportunity to litigate the
21 same issues, 515 U.S. 283, and suggested that a district court might be "indulging in gratuitous
22 interference" if it permitted the federal action to proceed." *Ibid.* This interference need not be direct
23 as it was in *Younger* (seeking to enjoin a state criminal prosecution); it is sufficient if the federal
24 action might have a preclusive effect on the state action. *Gilbertson v. Albright*, 381 F.3d 965, 976-
25 978 (9th Cir. 2004). Here a judgment in the City's lawsuit could have a preclusive effect on the state
26 court actions.

27 Other matters this court should consider are the factors bearing on a the *Younger* abstention,
28 including: the state courts interest in overseeing and the long history of protecting public employee

1 vested, contractual, rights; (*supra*) avoiding the possibility of piecemeal adjudication of issues; the
2 apparent forum shopping by the City and the City's failure to name as Necessary Parties in Interest,
3 the Boards of Administration of the Federated Retirement Plan and the Police and Fire Retirement
4 Plans.

5 In recognition of the importance of the issues involved, the pendency of multiple state court
6 proceedings,² the undisputable ability of full adjudication of all issues in the state court and the
7 disruption of the state court proceedings if this court were to proceed, this court should exercise its
8 discretion to refuse and entertain the City's suit for declaratory judgment.

9
10 Dated: June 26, 2012

WYLIE, McBRIDE,
PLATTEN & RENNER

11
12 /s/ John McBride

JOHN McBRIDE
Attorneys for Defendants

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14 I:\0230\72279\pnd\p&a supp dismiss.docx

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28 ² All of which presumably will either be assigned to one judge as related cases or consolidated.

EXHIBIT K

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12 Attorney for Defendants
13 San Jose Firefighters, IAFF Local 230 and
14 City Association of Management Personnel, IFPTE Local 21

15 UNITED STATES DISTRICT COURT
16
17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 CITY OF SAN JOSE,

19 Plaintiff,

20 vs.

21 SAN JOSE POLICE OFFICERS'
22 ASSOCIATION; SAN JOSE FIREFIGHTERS,
23 I.A.F.F. LOCAL 230; MUNICIPAL
24 EMPLOYEES' FEDERATION, AFSCME,
25 LOCAL 101; CITY ASSOCIATION OF
26 MANAGEMENT PERSONNEL, IFPTE,
27 LOCAL 21,

28 Defendants.

Case No. C12-02904 LHK PSG

ERRATA TO MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS

Date: October 4, 2012
Time: 1:30 p.m.
Ctvm: 8
Judge: Hon. Lucy H. Koh

Defendants San Jose Firefighters, IAFF Local 230 and City Association of Management Personnel, IFPTE Local 21 submit the following corrections to the Memorandum of Points and Authorities filed on June 26, 2012.

Page 1, Line 2, replace the word "principals" with the word "principles";

Page 2, Line 21, strike the words "and Federal Constitutions" and insert the word "Constitution";

Page 4, Lines 19 and 20, strike the words "both the California and Federal Constitutions"

1 and insert "the California Constitution";

2 Page 5, Line 20, strike the words "have been" and insert the words "have not been".

3
4 Dated: July 2, 2012

WYLIE, McBRIDE,
PLATTEN & RENNER

5
6 /s/ John McBride

JOHN McBRIDE
Attorneys for Defendants

7
8 I:\0230\72279\pnd\errata p&a supp dismiss.docx

EXHIBIT L

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CITY OF SAN JOSE,

Plaintiff,

v.

SAN JOSE POLICE OFFICERS'
ASSOCIATION; SAN JOSE FIREFIGHTERS,
I.A.F.F LOCAL 230; MUNICIPAL
EMPLOYEES' FEDERATION, AFSCME,
LOCAL 101; CITY ASSOCIATION OF
MANAGEMENT PERSONNEL, IFPTE,
LOCAL 21; INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL NO. 3;
and DOES 1-10,

Defendants.

Case No.: 12-CV-02904-LHK

ORDER RE MOTIONS TO DISMISS

On June 26, 2012, Defendants San Jose Firefighters, I.A.F.F. Local 230, and City Association of Management Personnel, IFPTE, Local 21, filed a motion to dismiss or in the alternative to stay ("Firefighters' Motion"). ECF No. 8. The Firefighters' motion is set to be heard October 4, 2012. On July 16, 2012, Defendant San Jose Police Officers' Association filed a separate motion to dismiss or in the alternative to stay ("Police Officers' Motion"). ECF No. 41. The Police Officers' motion is set to be heard November 15, 2012. On July 18, 2012, the Courtroom Deputy received a request for a hearing date for a third motion to dismiss to be filed by Defendant Municipal Employees' Federation, AFSCME, Local 101.

1 The Court has reviewed the Firefighters' and the Police Officers' motions and finds that
 2 there are several overlapping issues between the two motions. In the interest of efficiency, all
 3 Defendants are hereby ordered to meet and confer by July 23, 2012, to consider filing a single
 4 consolidated motion to dismiss. If Defendants agree to file a consolidated motion to dismiss, the
 5 Court will consider granting a small extension to the page limits imposed by the Civil Local Rules
 6 and hearing the consolidated motion on October 4, 2012. Defendants shall meet and confer with
 7 Plaintiff City of San Jose ("Plaintiff") and propose page limits and a stipulated briefing schedule
 8 that provides the Court at least three weeks to review the reply before the October 4, 2012 hearing.
 9 By July 25, 2012, the parties shall file a status report and, if agreement regarding the above is
 10 reached, a stipulation and proposed order.

11 The Court notes that Defendant International Union of Operating Engineers, Local No. 3
 12 ("IUOE"), was served on July 13, 2012. ECF No. 39. Plaintiff shall serve a copy of this Order on
 13 IUOE by July 19, 2012, and the Court requests that the parties include IUOE when they meet and
 14 confer. IUOE's counsel must file an appearance by July 25, 2012.¹

15 **IT IS SO ORDERED.**

16
 17 Dated: July 18, 2012


 LUCY H. KOH
 United States District Judge

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 28 ¹ Pursuant to Civil Local Rule 3-9, "[a] corporation, unincorporated association, partnership or
 other such entity may appear only through a member of the bar of this Court."

EXHIBIT M

1 Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
2 Gonzalo C. Martinez, No. 231724
Jennifer S. Stoughton, No. 238309
3 Amber L. West, No. 245002
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Attorneys for Defendant
10 San Jose Police Officers' Association ("SJPOA")

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

13 CITY OF SAN JOSE,

14 Plaintiff,

15 v.

16 SAN JOSE POLICE OFFICERS'
ASSOCIATION; SAN JOSE
17 FIREFIGHTERS, I.A.F.F., LOCAL
230; MUNICIPAL EMPLOYEES'
18 FEDERATION, AFSCME, LOCAL
101; CITY ASSOCIATION OF
19 MANAGEMENT PERSONNEL,
IFPTE, LOCAL 21, THE
20 INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL
21 NO. 3; and DOES 1-10,

22 Defendants.
23
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No. C12-02904 LHK PSG

**STATUS REPORT RE: COURT'S 7/18/12
ORDER RE: MOTIONS TO DISMISS**

1 Plaintiff City of San Jose ("the City") and all named defendants, including San
2 Jose Police Officers' Association ("SJPOA"); San Jose Firefighters, IAFF Local 230; City
3 Association of Management Personnel, IFPTE, Local 21; Municipal Employees'
4 Federation, AFSCME, Local 101 ("AFSCME"); and International Union of Operating
5 Engineers, Local No. 3, submit the following status report in response to the Court's July
6 18, 2012 Order.

7 On July 19, 20, and 23, 2012, counsel for defendants met and conferred
8 pursuant to the Court's Order to determine whether they could agree to consolidated
9 briefing on the motion to dismiss. The defendants were unable to agree to join in filing
10 one consolidated Motion to Dismiss.

11 The parties agreed to a partially consolidated briefing schedule, including a
12 consolidated opposition brief and a consolidated reply brief.

13 Defendant AFSCME intends to file a motion to dismiss on or before August 3,
14 2012 to present an alternative ground for dismissal it believes is not covered by the
15 existing Motions. AFSCME agreed to the filing of one consolidated reply brief with the
16 other defendants.

17 On July 23, 2012, counsel for SJPOA, on behalf of all defendants, met and
18 conferred with plaintiff the City of San Jose regarding a consolidated briefing schedule.
19 The City agreed to file a consolidated opposition brief to all Motions to Dismiss,
20 including that of AFSCME. The parties propose a briefing schedule for the consolidated
21 opposition brief and consolidated reply brief as set forth in the Stipulation and Proposed
22 Order; consolidated reply brief will be filed on or before September 13, 2012, *i.e.*, at least
23 21 days before the October 4 court hearing on the motions.

24 The parties agree and respectfully request that, given the overlap in arguments
25 and pressing deadlines relating to Measure B, the Court hear all motions to dismiss at the
26 October 4 hearing and issue its decision as soon as practicable after the hearing.

1 Dated: July 24, 2012

2 CARROLL, BURDICK & McDONOUGH LLP

3
4 By _____

5 Gregg McLean Adam
6 Jonathan Yank
7 Gonzalo Martinez
8 Jennifer S. Stoughton
9 Amber L. West

10 Attorneys for Defendant
11 San Jose Police Officers' Association

12 Dated: July 24, 2012

13 WYLIE McBRIDE PLATTEN & RENNER

14 By _____

15 John A. McBride
16 Christopher E. Platten
17 Mark S. Renner

18 Attorneys for Defendant
19 San Jose Firefighters, IAFF Local 230

20 Dated: July 24, 2012

21 WYLIE McBRIDE PLATTEN & RENNER

22 By _____

23 John A. McBride
24 Christopher E. Platten
25 Mark S. Renner

26 Attorneys for Defendant
27 City Association of Management Personnel,
28 IFPTE, Local 21

1 Dated: July 24, 2012

2 BEESON TAYER & BODINE

3
4 By _____
5 Vishtasp Mehr Soroushian

6 Teague Pryde Paterson
7 Vishtasp Mehr Soroushian
8 Attorneys for Defendant
Municipal Employees' Federation, AFSCME,
Local 101

9 Dated: July 24, 2012

10 WYLIE McBRIDE PLATTEN & RENNER

11
12 By _____
13 John A. McBride
14 Christopher E. Platten
15 Mark S. Renner
16 Attorneys for Defendant
International Union of Operating Engineers,
Local No. 3

17 Dated: July 24, 2012

18 MEYERS, NAVE, RIBACK, SILVER
19 & WILSON

20 By _____
21 Michael Christian Hughes
22 Jennifer Lynne Nock
23 Linda Margaret Ross
24 Attorneys for Plaintiff
25 City of San Jose
26
27
28

EXHIBIT N

1 Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
2 Gonzalo C. Martinez, No. 231724
Jennifer S. Stoughton, No. 238309
3 Amber L. West, No. 245002
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9 Attorneys for Defendant
10 San Jose Police Officers' Association ("SJPOA")

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

13 CITY OF SAN JOSE,

14 Plaintiff,

15 v.

16 SAN JOSE POLICE OFFICERS'
ASSOCIATION; SAN JOSE
17 FIREFIGHTERS; I.A.F.F., LOCAL
230; MUNICIPAL EMPLOYEES'
18 FEDERATION, AFSCME, LOCAL
101; CITY ASSOCIATION OF
19 MANAGEMENT PERSONNEL,
IFPTE, LOCAL 21, THE
20 INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL
21 NO. 3; and DOES 1-10,

22 Defendants.

No. C12-02904 LHK PSG

**STIPULATION AND [PROPOSED] ORDER
RE: CONSOLIDATED BRIEFING ON
MOTIONS TO DISMISS**

1 In accordance with the Court's instruction, the parties have met and conferred
2 and although unable to reach a global agreement on a single consolidated Motion to
3 Dismiss, have reached an agreement to streamline and expedite the resolution of the
4 Motions to Dismiss as set forth below.

5 IT IS HEREBY STIPULATED AND AGREED by and among the
6 undersigned parties, by and through their counsel, that:

- 7
- 8 1. The hearing on all defendants' Motions to Dismiss the First Amended Complaint
9 will occur on October 4, 2012.
 - 10 2. Defendant Municipal Employees' Federation, AFSCME, Local 101 may file a
11 separate Motion to Dismiss no later than August 3, 2012, presenting alternative
12 grounds for dismissal.
 - 13 3. On or before August 20, 2012, the City of San Jose will file one consolidated
14 opposition brief to all Motions to Dismiss, not to exceed 45 pages.
 - 15 4. Defendants will file one consolidated reply brief not to exceed 25 pages on or
16 before September 13, 2012, *i.e.*, at least 21 days before the October 4 court
17 hearing on the motions.
 - 18 5. Given the overlap in arguments and pressing deadlines relating to Measure B,
19 the parties respectfully request that the Court rule as soon as practicable after
20 the October 4 hearing on the motions.
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1 Dated: July __, 2012

2 CARROLL, BURDICK & McDONOUGH LLP

3
4 By _____
5 Gregg McLean Adam
6 Jonathan Yank
7 Gonzalo Martinez
8 Jennifer S. Stoughton
9 Amber L. West
10 Attorneys for Defendant
11 San Jose Police Officers' Association

12 Dated: July __, 2012

13 WYLIE McBRIDE PLATTEN & RENNER

14 By _____
15 John A. McBride
16 Christopher E. Platten
17 Mark S. Renner
18 Attorneys for Defendant
19 San Jose Firefighters, IAFF Local 230

20 Dated: July 24, 2012

21 BEESON TAYER & BODINE

22 By _____
23 Vishtasp Mehr Soroushian
24 Teague Pryde Paterson
25 Vishtasp Mehr Soroushian
26 Attorneys for Defendant
27 Municipal Employees' Federation, AFSCME,
28 Local 101

1 Dated: July __, 2012

2 WYLIE McBRIDE PLATTEN & RENNER

3
4 By _____
5 John A. McBride
6 Christopher E. Platten
7 Mark S. Renner
8 Attorneys for Defendant
9 City Association of Management Personnel,
10 IFPTE, Local 21

11 Dated: July __, 2012

12 WYLIE McBRIDE PLATTEN & RENNER

13 By _____
14 John A. McBride
15 Christopher E. Platten
16 Mark S. Renner
17 Attorneys for Defendant
18 International Union of Operating Engineers,
19 Local No. 3

20 Dated: July __, 2012

21 MEYERS, NAVE, RIBACK, SILVER
22 & WILSON

23 By _____
24 Michael Christian Hughes
25 Jennifer Lynne Nock
26 Linda Margaret Ross
27 Attorneys for Plaintiff
28 City of San Jose

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: July 24, 2012

Lucy H. Koh

HON. LUCY H. KOH
United States District Court Judge

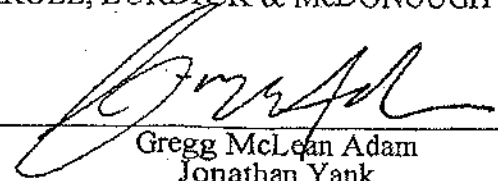
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Dated: July 24, 2012

CARROLL, BURDICK & McDONOUGH LLP

By



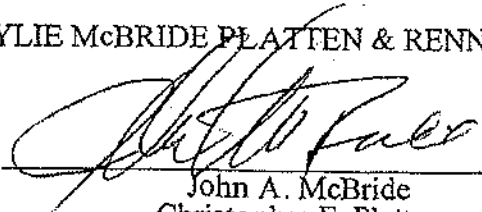
Gregg McLean Adam
Jonathan Yank
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Attorneys for Defendant
San Jose Police Officers' Association

Dated: July 24, 2012

WYLIE McBRIDE PLATTEN & RENNER

By



John A. McBride
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San Jose Firefighters, IAFF Local 230

Dated: July 24, 2012

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Vishtasp Mehr Soroushian

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Attorneys for Defendant
Municipal Employees' Federation, AFSCME,
Local 101

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Dated: July __, 2012

CARROLL, BURDICK & McDONOUGH LLP

By _____
Gregg McLean Adam
Jonathan Yank
Gonzalo Martinez
Jennifer S. Stoughton
Amber L. West
Attorneys for Defendant
San Jose Police Officers' Association

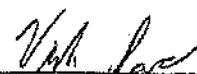
Dated: July __, 2012

WYLIE McBRIDE PLATTEN & RENNER

By _____
John A. McBride
Christopher E. Platten
Mark S. Renner
Attorneys for Defendant
San Jose Firefighters, IAFF Local 230

Dated: July 24, 2012

BEESON TAYER & BODINE

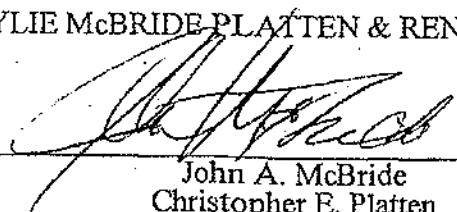
By  _____
Vishtasp Mehr Soroushian
Teague Pryde Paterson
Vishtasp Mehr Soroushian
Attorneys for Defendant
Municipal Employees' Federation, AFSCME,
Local 101

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Dated: July 24, 2012

WYLIE McBRIDE PLATTEN & RENNER

By



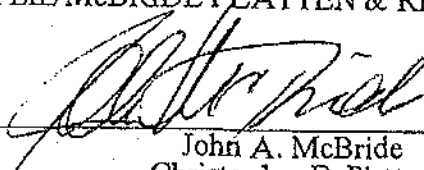
John A. McBride
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Mark S. Renner

Attorneys for Defendant
City Association of Management Personnel,
IFPTE, Local 21

Dated: July 24, 2012

WYLIE McBRIDE PLATTEN & RENNER

By



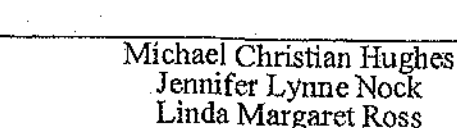
John A. McBride
Christopher E. Platten
Mark S. Renner

Attorneys for Defendant
International Union of Operating Engineers,
Local No. 3

Dated: July __, 2012

MEYERS, NAVE, RIBACK, SILVER
& WILSON

By



Michael Christian Hughes
Jennifer Lynne Nock
Linda Margaret Ross

Attorneys for Plaintiff
City of San Jose

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Dated: July __, 2012

WYLIE McBRIDE PLATTEN & RENNER

By _____

John A. McBride
Christopher E. Platten
Mark S. Renner

Attorneys for Defendant
City Association of Management Personnel,
IFPTE, Local 21

Dated: July __, 2012

WYLIE McBRIDE PLATTEN & RENNER

By _____

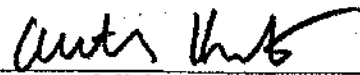
John A. McBride
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Mark S. Renner

Attorneys for Defendant
International Union of Operating Engineers,
Local No. 3

Dated: July 24, 2012

MEYERS, NAVE, RIBACK, SILVER
& WILSON

By _____



Michael Christian Hughes
Jennifer Lynne Nock
Linda Margaret Ross

Attorneys for Plaintiff
City of San Jose

EXHIBIT O

1 Gregg McLean Adam, No. 203436
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2 Gonzalo C. Martinez, No. 231724
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9 Attorneys for Plaintiff
10 San Jose Police Officers' Association

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA
13

14 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

15 Plaintiff,
16

17 v.

18 CITY OF SAN JOSE, BOARD OF
ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT
19 RETIREMENT PLAN OF CITY OF
SAN JOSE, and DOES 1-10,
20 inclusive,

21 Defendants.
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No. 1-12-CV-225926

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF
FOR:**

**(1) VIOLATION OF CALIFORNIA
CONSTITUTIONAL CONTRACTS CLAUSE;**

**(2) VIOLATION OF CALIFORNIA
CONSTITUTIONAL TAKINGS CLAUSE;**

**(3) VIOLATION OF CALIFORNIA DUE
PROCESS;**

**(4) VIOLATION OF CALIFORNIA FREEDOM
OF SPEECH—RIGHT TO PETITION;**

**(5) VIOLATION OF SEPARATION OF
POWERS DOCTRINE;**

(6) BREACH OF CONTRACT;

(7) VIOLATION OF MMBA;

**(8) VIOLATION OF CAL. PENSION
PROTECTION ACT.**

1 Plaintiff SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA" or
2 "Plaintiff") on behalf of its members brings this action for declaratory, injunctive and
3 other relief asking the Court to declare unconstitutional and temporarily and permanently
4 enjoin implementation of proposed changes to the San Jose Police and Fire Department
5 Retirement Plan:

6 1. Plaintiff challenges provisions of "The Sustainable Retirement
7 Benefits and Compensation Act," which was passed by the San Jose electorate as
8 Measure B at the June 5, 2012 election ("Measure B"), and which will amend
9 provisions of the San Jose City Charter in ways detrimental to the SJPOA and its
10 members. Unless restrained, Measure B will become effective immediately and
11 directs the City Council with the goal that implementing ordinances "shall become
12 effective no later than September 30, 2012."

13 2. Numerous provisions of Measure B violate the California Constitution
14 on their face and as applied to Police Officers who were participants in the 1961 Police
15 and Fire Department Retirement Plan ("Retirement Plan") on or prior to June 5, 2012,
16 in that Measure B:

17 a. substantially impairs these employees' contracts with the City of
18 San Jose for the Retirement Plan and benefits in place when they began working for
19 the police department, and as improved during their employment;

20 b. constitutes a taking of private property rights without just
21 compensation or due process;

22 c. violates their right to free speech and to petition the courts
23 through a "poison pill" that punishes employees if they successfully challenge portions
24 of Measure B;

25 d. violates the separation of powers doctrine by giving the City
26 ultimate authority over whether an unlawful ordinance implementing Measure B
27 should be amended or severed;

1 e. impairs SJPOA members' rights under their Memorandum of
2 Understanding ("MOA") with the City by unilaterally increasing contributions for
3 future retiree medical benefits above what is contractually agreed;

4 f. violates the Meyers-Millas-Brown Act ("MMBA"), Gov. Code
5 section 3500, *et seq.*, by unilaterally reducing employee salaries—a mandatory subject
6 of bargaining—if Section 1506-A of Measure B is declared invalid; and

7 g. violates the California Pension Protection Act by abrogating the
8 fiduciary duties of the Board of Administration for Police and Fire Department
9 Retirement Plan ("Retirement Board") to current and future retirees.

10 3. Hundreds of current Police Officers on whose behalf Plaintiff brings
11 this action will suffer severe and irreparable harm upon implementation of Measure B
12 and amendment of the Charter. Among other things, Measure B forces employees to
13 make the Hobson's choice between standing on their existing pension rights and
14 having their existing salaries reduced by as much as 16%, or "voluntarily" opting into
15 a second tier Retirement Plan with lesser benefits so they can keep their current
16 salaries. Measure B also has numerous other consequences for Police Officers as
17 further described herein, including detrimentally changing the definition of disability
18 retirement, authorizing suspension of cost-of-living adjustments, eliminating the
19 Supplemental Retirement Benefits Reserve program, and dramatically increasing
20 salary deductions for future retiree healthcare.

21 4. Measure B also discourages employees from exercising their freedom
22 of speech rights, including their right to petition the courts for redress. For example, it
23 specifically provides that if its lesser "voluntary" retirement program is "illegal,
24 invalid or unenforceable as to Current Employees . . . then . . . an equivalent amount
25 of savings shall be obtained through pay reductions." It also gives the City ultimate
26 authority to decide whether any implementing ordinance determined to be unlawful
27 should be "amend[ed] ... or ... sever[ed]," regardless of any court order obtained by
28 employees enforcing their rights.

JURISDICTION AND VENUE

5. All parties exist and reside within the County of Santa Clara, and all relevant actions and omissions took place within the County of Santa Clara, making this Court the appropriate venue for this action.

THE PARTIES

6. Plaintiff SJPOA is a California nonprofit unincorporated labor association representing over a thousand individuals working in Police Officer classifications in Bargaining Units 11, 12, 13 and 14 (collectively "Police Officers") employed by the City of San Jose. SJPOA's purposes include advocating for the interests of its members with respect to their collective bargaining rights, including their pension and retirement rights. SJPOA brings this action on behalf of itself and its members, having standing to do so under the doctrine articulated by the California Supreme Court in *Professional Fire Fighters v. City of Los Angeles* (1963) 60 Cal.2d 276, and *Int'l Assoc. of Fire Fighters v. City of Palo Alto* (1963) 60 Cal.2d 295.

7. The members of SJPOA are current employees of the City of San Jose who were induced to accept positions in and continued to work in the police department in reasonable reliance that they had the "collateral right to earn future pension benefits through continued service, on terms substantially equivalent to those" existing at the time they began working for the city, or enhanced during their service with the City. (*Legislature v. Eu* (1991) 54 Cal.3d 492; *Carman v. Alvord* (1982) 31 Cal.3d 318.)

8. Despite serving in the capital of Silicon Valley, San Jose Police Officers are amongst the lowest paid Police Officers in the Bay Area. They previously agreed to a 10% reduction in total compensation, effective since July 1, 2011 and continuing at least until June 30, 2012. They currently pay approximately 10.46% of their salary towards normal cost retirement contributions. They also currently pay an additional 7.01% of their salary towards retiree medical benefits—a contribution rate that far exceeds the industry standard. Under Measure B, Police Officers' payments

1 would substantially increase through additional salary deductions, further decreasing
2 their net income.

3 9. The City of San Jose ("City") is a charter city that employs the
4 members of SJPOA and has established the Retirement Plan. The City is governed by
5 the San Jose City Charter ("Charter") and by superseding state law. Labor-
6 management relations between the SJPOA and the City are governed by the MMBA.

7 10. The Retirement Plan is administered by Defendant Board of
8 Administration of the Police and Fire Department Retirement Plan ("the Board"),
9 whose primary fiduciary duties are to current and future members and their
10 beneficiaries. The Board has no authority over any changes to the design and terms of
11 the Retirement Plan. Its duty is to administer the Plan according to its terms. Pursuant
12 to Code of Civil Procedure section 389(a)(1), the Board is named herein solely as a
13 necessary and indispensable party because of its role in administering the benefits at
14 issue in this action; otherwise, complete relief cannot be accorded. *See* Cal. Civ. Proc.
15 Code § 389(a)(1). No damages, writ, injunctive or other relief, including attorneys'
16 fees or costs, is presently sought against the Board in this action.

17 11. The terms and conditions of SJPOA members' employment, including
18 their right to certain retirement benefits and their current salaries, are governed by a
19 MOA between the SJPOA and the City, which was entered into pursuant to the
20 Meyers-Milias-Brown Act, Government Code section 3500, et seq.

21 BACKGROUND

22 12. The San Jose City Charter establishes that the City has a duty to
23 establish and maintain a retirement plan for its employees. As further described
24 herein, the Charter mandates certain minimum retirement benefits for Police Officers.

25 13. The Retirement Plan applicable to Police Officers is contained in the
26 San Jose Municipal Code. The Charter imposes on the City a duty to keep the
27 Retirement Plan actuarially sound.

1 14. The Retirement Plan is funded by contributions from employees and
2 the City as specified in the funding provisions of the City Charter, Municipal Code,
3 and MOA.

4 15. In the spring and early summer of 2011, SJPOA and the City had
5 lengthy negotiations over retirement benefits during collective bargaining negotiations.
6 Specifically, the City represented that, according to its projections, retirement costs
7 were rapidly escalating and needed to be reduced.

8 16. The SJPOA and the City agreed to continue negotiations on pension
9 and retiree health care benefits for current and future employees, even though they had
10 reached agreement on the other terms and conditions of employment.

11 17. The City subsequently began a campaign to reduce all City employees'
12 pension benefits, including those of Police Officers, through a City-sponsored voter
13 ballot initiative and a threatened declaration of fiscal emergency. If implemented,
14 Measure B will amend the San Jose City Charter.

15 18. To support the City's efforts to declare a fiscal emergency and the
16 ballot measure, the City's mayor asserted repeatedly in public statements and press
17 releases that, by Fiscal Year ("FY") 2015-16, the City's retirement contribution costs
18 would reach \$650 million per year.

19 19. On July 5, 2011, certain City Council members formally proposed a
20 ballot initiative that would unilaterally reduce retirement benefits of all City
21 employees, including those represented by SJPOA. The ballot measure was
22 purportedly directed at reducing the City's retirement costs to FY 2010-2011 levels by
23 FY 2015-16.

24 20. The City's projected retirement contribution increases were partly
25 rooted in the City's reduced contributions during times when the Retirement Plan had
26 an actuarial surplus.¹ For example, in fiscal years 1993 through 2004 the City reduced

27 ¹ An actuarial surplus is defined as a situation where the actuarial value of the assets in the
28 retirement fund is more than the value of the plan's actuarial liability.

1 its contributions into the Retirement Plan by approximately \$80 million. The
2 Retirement Board later concluded in 2011 that, had the City not reduced its
3 contributions during that time period, the \$80 million would have grown to \$120
4 million. That increased the Retirement Plan's Unfunded Actuarial Liability by
5 approximately 44%.

6 21. On December 1, 2011, the independent actuary for the Retirement Plan
7 issued a report with updated projections for the City's prospective retirement costs
8 which showed that the City's retirement contributions would be far less than previously
9 estimated and far less than the City had been relying on as justification for the
10 proposed declaration of fiscal emergency and ballot measure. Specifically, the report
11 showed that the City's contributions for Fiscal Year 2012-13 for the Police and Fire
12 Retirement Plan would be approximately \$55 million less than previously expected.

13 22. At a City Council meeting on December 6, 2011, the Mayor withdrew
14 his proposal to have the City Council declare a fiscal emergency. Even though there
15 was no fiscal emergency, the City Council nonetheless proceeded with placing the
16 ballot measure before the voters.

17 23. On February 21, 2012, the City issued a revised ballot measure. On
18 March 6, 2012, the City Council voted to place that revised ballot measure ("Measure
19 B") on the June 5, 2012 election ballot. On April 10, 2012, the Sixth Appellate
20 District Court of Appeal found the ballot statement of issue was "impermissibly
21 partisan," and ordered the City to revise it, which it did.

22 24. Measure B was passed by the San Jose electorate on June 5, 2012. If
23 allowed to go into effect, Measure B will change SJPOA members' retirement benefits
24 and the Retirement Plan as further described below.

25 **POLICE OFFICERS' RIGHTS UNDER THE RETIREMENT PLAN AND MOA**

26 25. The Retirement Plan established by the pre-Measure B City Charter
27 and the San Jose Municipal Code gives Police Officers constitutionally-protected and
28 vested contractual and property rights to certain pension benefits and the right to

1 proceed under the Retirement Plan in place when they began working for the City, as
2 well as any improvements to those benefits made during their employment with the
3 City.

4 26. SJPOA members' benefits and rights became vested when they
5 accepted their positions with the City or, with respect to any improvements to those
6 benefits, when they continued laboring for the City. In exchange for these benefits and
7 rights, SJPOA members accepted their positions with the City and will continue to as
8 they have in the past dutifully labor for the City of San Jose.

9 27. The City Charter prescribes certain minimum benefits for Police
10 Officers. The Charter expressly states that the City "may grant greater or additional
11 benefits." There is no provision for reducing employee benefits or for reducing
12 benefits below the minimum in the Charter. As further described herein, Police
13 Officers' pension rights arise from the Charter, the Municipal Code, and the MOA.

14 28. **Service Retirement and Pension Calculation.** The Charter (Section
15 1504) establishes Police Officers' right to service retirement. The Municipal Code
16 provides that Police Officers are eligible to begin receiving service retirement benefits
17 at age 50 with 25 years of service, at age 55 with 20 years of service, or at any age
18 following 30 years of service. Upon retirement, they are entitled to a pension
19 calculated according to the following formula contained in Municipal Code section
20 3.36.809: 2.5% of final compensation for each year of service up to 20 years, plus 4%
21 of final compensation for each year of service between 21-30 years up to a cap of 90%
22 of final compensation.

23 29. **Disability Retirement and Pension Calculation.** The Charter
24 (Section 1504) establishes Police Officers' right to disability retirement and defines
25 "disabled" as "the incurrance of a disability . . . which renders the officer or employee
26 incapable of continuing to satisfactorily assume the responsibilities and perform the
27 duties and functions of his or her office or position and of any other office or position
28 *in the same classification of offices or positions* to which the City may offer to transfer

1 him or her" (emphasis added). Upon disability retirement, Police Officers are
2 entitled to a pension calculated according to the following formula in Municipal Code
3 section 3.36.1020: 50% of final compensation, plus 4% of final compensation for each
4 full year of service exceeding 20 years, to a cap of 90% of final compensation.

5 **30. Splitting of Normal Retirement Costs According to 3:8 Ratio.** The
6 Charter (Section 1504) and Municipal Code (Section 3.36.410) establish that Police
7 Officers contribute 3/11ths of the normal costs of maintaining the Retirement Plan, and
8 the City pays 8/11ths.

9 **31. City Pays All Unfunded Actuarial Liability ("UAL") for Pensions.**
10 The Municipal Code (Sections 3.36.1520 and 3.36.1550) establishes that the City pays
11 any UAL generated by the Retirement Plan.² Under the Retirement Plan, the City is
12 required to pay UAL and Police Officers did not pay UAL for pensions.

13 **32.** When the Retirement Plan generated an actuarial surplus, the City
14 reaped all of the benefits and used those excess earnings to reduce its contribution rates
15 during FYs 1993-2004 by approximately \$80 million. According to the Retirement
16 Board, that \$80 million would have grown to \$120 million and increased the existing
17 UAL by 44%.

18 **33. Yearly Cost of Living Adjustments ("COLA").** The Municipal
19 Code (Section 3.44.150) establishes Police Officers' right to an annual 3% COLA to
20 pension benefits upon retirement. The normal cost of the COLA is funded by
21 contributions from Police Officers and the City on a 3-8 basis (Section 3.44.090) to
22 fund the normal cost.

23 **34. Supplemental Retiree Benefit Reserve ("SRBR") Payments.** The
24 Municipal Code (section 3.36.580) also establishes a supplemental retirement benefit
25 reserve, funded from employee and City contributions and administered solely for the

26
27 ² UAL is "the difference between actuarial accrued liability and the valuation assets in a
28 fund. [Citation] Most retirement systems have [UAL]. . . . [UAL] does not represent a
debt that is payable [in full] today." (*County of Orange v. Association of Orange County
Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 34.)

1 benefit of Retirement Plan members, from which the Retirement Board has the
2 discretion to make a variable annual payment to retirees based on investment
3 performance.

4 **35. Contribution Rates for Retiree Healthcare.** Employee contribution
5 rates for retiree healthcare are established through the collective bargaining process.
6 Thus, the MOA sets Police Officers' contribution rates for retiree healthcare.
7 Specifically, contributions for retiree medical benefits are made by the City and Police
8 Officers on a 1:1 ratio. The MOA caps any increase in these contribution rates for
9 Police Officers at 1.25% per year. The MOA further provides that employees shall not
10 pay more than 10% of their pensionable salary to fund retiree healthcare. Currently,
11 SJPOA members pay 7.01% of their pensionable pay toward retiree healthcare costs,
12 which will increase to 8.26% on July 1, 2012 under the MOA.

13 **36.** In enacting the Charter and Municipal Code sections described above,
14 and by ratifying the MOA, the City expressly and/or implicitly intended to bind itself
15 to these terms for current Police Officers. These rights became protected vested rights
16 when these officers began working with the City (or continued to work following
17 benefit improvements), and cannot be legislated away by the City or by ballot
18 initiative. Nothing in the Charter and the Municipal Code prohibits the creation of any
19 implied rights.

20 **MEASURE B: "THE SUSTAINABLE RETIREMENT BENEFITS AND**
21 **COMPENSATION ACT"**

22 **37.** Measure B makes a number of significant and detrimental changes to
23 the Retirement Plan and to retiree benefits established in the MOA affecting Police
24 Officers. All of these changes were made without any consideration and without
25 giving Police Officers comparable new advantages.

26 **38.** By its own terms, Measure B will immediately amend the San Jose
27 City Charter and "prevail[s] over all other conflicting or inconsistent wage, pension or
28 post employment benefit provision in the Charter, ordinances, resolutions or other

1 enactments.” Some of these changes take place immediately, while others will require
2 implementing ordinances, though Measure B would appear to require that the City
3 begin promulgating such implementing ordinances right away. Measure B provides
4 that it is the goal that any implementing ordinances “shall become effective no later
5 than September 20, 2012.”

6 39. Measure B does not purport to retroactively change the pension
7 formulas for prior service years and only purports to apply prospectively.

8
9 **Sections 1506-A and 1507-A: A “Voluntary” Choice Between Giving Up the Right to
Current Level of Salary Now or Giving Up Future Retirement Benefits**

10 40. The core of Measure B is the misleadingly-titled “Voluntary Election
11 Program” (“VEP”) which creates “an alternative retirement program” that would
12 provide benefit levels that are *less* favorable than those outlined above. Employees
13 who “opt in” to the VEP will maintain their current salaries and the current 3:8 cost-
14 sharing ratio for the normal costs. By contrast, Police Officers who elect to remain in
15 the current Retirement Plan for future service credits will be forced to pay up to 50%
16 of the pension UAL through a reduction in their current salaries up to 16%. This
17 Hobson’s choice is contained in Sections 1506-A and 1507-A of Measure B.

18 41. Section 1506-A mandates that employees not entering the VEP will
19 have their salary reduced by as much as 16% in order to pay for up to half of the
20 pension UAL. Although Measure B styles this reduction as an “adjust[ment] through
21 additional retirement contributions,” Measure B would effectively require Police
22 Officers (who have never paid UAL contributions for their pensions) to offset the
23 City’s UAL costs through salary deductions resulting in reductions to take-home pay
24 without giving them any comparable advantage.

25 42. Section 1507-A sets out the VEP which caps employees’ pension
26 benefits and prospectively changes the pension formula for those employees
27 “voluntarily” “opting” into this system. Section 1507-A mandates that such
28 employees “will be required to sign an irrevocable election waiver (as well as their

1 spouse or domestic partner, former spouse or former domestic partner, if legally
2 required) acknowledging that the employee irrevocably relinquishes his or her existing
3 level of retirement benefits and has voluntarily chosen reduced benefits."

4 43. The VEP imposes a reduced retirement benefits formula as follows:
5 2% of final compensation for each year of prospective service, up to a cap of 90% of
6 final compensation. It re-defines "final compensation" as "the average annual
7 pensionable pay of the highest three consecutive years of service." Section 1507-A
8 also increases the retirement age to 57 for Police Officers, including the eligibility to
9 retire after 30 years of service, and disallows retirement before age 50. It caps COLA
10 increases at 1.5% per fiscal year. Finally, it imposes a new requirement that an
11 employee is eligible for a full year of service credit only upon reaching 2080 hours of
12 regular time worked, excluding overtime.

13 44. In exchange for giving up their rights, Police Officers entering the
14 VEP keep their current salaries, do not pay UAL and retain the 3:8 cost-sharing ratio—
15 rights which Police Officers already have. Police officers forced into VEP would thus
16 receive no comparable advantage for the waiver of their rights.

17 45. The VEP presents a Hobson's choice that is unconscionable and
18 unlawful because current employees have no meaningful choice. The City is obligated
19 by the MOA to maintain contractual salaries and retiree healthcare contributions at the
20 agreed rate, and is also obligated by the Charter and Retirement Plan to pay Police
21 Officers the benefits under the retirement system in place when they began working
22 for the City, as well as any enhancements made during their service with the City. The
23 City may not lawfully renege on either of its obligations, let alone penalize current
24 employees for standing on their rights.

25 46. An employee's election under the VEP is not "voluntary" at all and
26 fails for lack of consideration in the form of a comparable advantage because,
27 regardless of what decision an employee makes, he or she is forced to give up valuable
28 rights protected under the law. Further, any such choice is made under economic

1 duress because employees not electing the VEP have their salaries reduced by as much
2 as 16%.

3 47. Although the VEP would require IRS approval, Measure B mandates
4 that the "compensation adjustments" shall be effective regardless of whether IRS
5 approval has been given and regardless of whether the City Council has implemented
6 the VEP.

7 48. The City has known since at least January of 2012 that the VEP will
8 not receive IRS approval in 2012 and is likely never to receive such approval.
9 Nonetheless, the City Council voted to put Measure B, including the VEP, on the June
10 5, 2012 ballot.

11 **Section 1509-A: Evisceration of Disability Retirement Availability**

12 49. Section 1509-A of Measure B immediately and radically alters Police
13 Officers' rights to disability retirement by unilaterally imposing numerous burdensome
14 requirements, including that "City employees must be incapable of engaging in *any*
15 gainful employment for the City." (Emphasis added.) Specifically, Measure B re-
16 defines disability retirement for Police Officers by now requiring a determination that
17 an employee be unable to "perform *any other jobs* described in the City's classification
18 plan *in the employee's department* because of his or her medical condition."
19 (Emphasis added.) The practical effect for a Police Officer is that if he or she is able
20 to perform *any* function within the police department—including non-peace officer
21 functions—he or she is now ineligible for disability retirement. Under the current
22 Retirement Plan, such an employee would have been eligible for disability retirement
23 if he or she could not perform work within his or her own classification.

24 50. Measure B further requires that a disability retirement assessment be
25 made even if there are *no* positions for which an otherwise-disabled Police Officer
26 may be eligible—i.e., even if there are no vacancies for such jobs. That means that if
27 an otherwise-disabled employee is found to be able to perform non-peace officer
28 functions in his or her department but there is no available vacancy, that employee will

1 be ineligible for disability retirement. Even if there is an available vacancy, Measure
2 B would not require that the officer be placed in the vacancy. Under Measure B such
3 an employee would get *nothing* even though he or she was incapacitated in the line of
4 duty. Measure B does not provide employees with any comparable advantage for
5 taking away this right.

6 **Section 1510-A: Unfettered Right to Deny COLA Increases**

7 51. Section 1510-A gives the City the right to deny COLA increases to
8 non-VEP and VEP employees alike. Upon a unilateral declaration of "fiscal and
9 service level emergency" by the City Council, it allows the City to suspend COLA
10 increases to applicable retirees (defined as "current and future retirees employed as of
11 the effective date of this Act") for up to five years. Measure B does not require that
12 the time period for which COLAs are suspended have any nexus to the declared
13 emergency. Nor does Measure B contain any definition of a "fiscal and service level
14 emergency" or even require that the City Council's suspension of COLAs be
15 "reasonable" under the circumstances or reasonably related to the declared emergency.
16 Measure B does not provide employees with any comparable advantage for taking
17 away this right.

18 52. Any "suspend[ed]" COLA increases are automatically *forfeited*
19 because Measure B directs that COLAs "shall" only be restored "prospectively" and
20 even then only "in whole or in part." Measure B provides no way for retirees to obtain
21 past COLAs to which they were entitled, nor does it provide a comparable advantage
22 for the loss of this protected right.

23 53. Additionally, Section 1510-A caps COLA increases once they are
24 "restore[d]" as follows: 3% for current retirees and non-VEP employees, and 1.5% for
25 VEP employees. There is also no requirement that any "restore[d]" COLAs be
26 "reasonable" under the circumstances or reasonably related to the declared emergency,
27 let alone any provision for affected employees to obtain past COLAs to which they
28 were entitled.

Section 1511-A: Elimination of SRBR

54. Section 1511-A eliminates the SRBR in whole and with it any supplemental benefits that Police Officers would have received during retirement, even though such employees have paid into the SRBR. It directs that any funds in the SRBR be placed in the Retirement Plan and mandates that any supplemental benefits other than those authorized by Measure B "shall not be funded from plan assets." Measure B does not provide employees with any comparable advantage for taking away this right.

55. Elimination of the SRBR will have detrimental effects upon retirement of Police Officers who paid into the SRBR in expectation they would receive that benefit.

Section 1512-A: Increases to Payment for Retiree Healthcare

56. Section 1512-A dramatically increases the amount that Police Officers will have to pay for retiree healthcare. Under Measure B, Police Officers would be required to pay a full 50% of the normal cost and unfunded liability for the retiree healthcare plan. This would have the effect of eliminating the 10% cap contained in the MOA and, consequently, resulting in a significant net salary decrease, as the combined cost is currently 32% of salary. That salary decrease is in addition to and cumulative with the other salary deductions under Measure B, which will have a detrimental impact on SJPOA members.

57. Additionally, Measure B detrimentally re-defines "low cost plan" to mean "the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement Plan." That effectively makes it impossible for the SJPOA to bargain over retiree medical benefits, as it will fix employees' benefits to the lowest cost plan City-wide, regardless of whether such plan was bargained for by another bargaining unit or unilaterally imposed on another bargaining unit by the City.

1 **Section 1513-A: Compromising Board's Fiduciary Duties to**
2 **Current and Future Beneficiaries**

3 58. Section 1513-A compromises the Retirement Board's constitutionally-
4 based fiduciary duties to current and future beneficiaries, including SJPOA members,
5 by forcing the Retirement Board to take into account "any risk to the City and its
6 residents" in its actuarial analyses, by compelling the Retirement Board to equally
7 "ensure fair and equitable treatment for current and future plan members *and taxpayers*
8 with respect to the costs of the plans [,]" and requiring the Retirement Board to act
9 with the objective "to minimize ... the volatility of contributions required to be made
10 by the City" These changes violate Article XVI, section 17 of the California State
11 Constitution, which mandates that the Retirement Board's fiduciary duties are owed
12 only to participants and their beneficiaries.

13 **Sections 1514-A and 1515-A: Poison Pill and Usurping Judicial Function**

14 59. Measure B would punish employees for exercising their constitutional
15 rights to challenge its provisions in the courts in at least two different ways. It also
16 usurps the power of the judiciary.

17 60. Section 1514-A contains a wholly punitive "poison pill" that mandates
18 that if Section 1506-A(b)—which requires that the salaries of non-VEP, current
19 employees be reduced by as much as 16% to cover half of the UAL under the
20 Retirement Plan—is "illegal, invalid or unenforceable as to Current Employees," then
21 "an equivalent amount of savings *shall* be obtained through *pay reductions*." Measure
22 B does not require that such pay reductions be used to pay UAL. It does not even
23 provide any guidance as to what those reductions should be used for and appear to be
24 reductions for the sake of reductions.

25 61. The absence of any such guidance makes plain that the reduction in
26 employee salaries is merely punitive, *i.e.*, to discourage employees from challenging
27 Measure B in court and to punish them if they are successful.

1 62. Section 1515-A contains another provision that provides that "[i]f any
2 ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or
3 otherwise unenforceable by a final judgment, the matter shall be referred to the City
4 Council" to have it decide "whether to amend the ordinance consistent with the
5 judgment, or whether to determine the section severable and ineffective."

6 63. The City Council is not a court and may not decide the legality of a
7 measure it unilaterally put before the voters. Under our system of government, the
8 decisions described above are not up to the City Council but are the province of the
9 courts. Measure B usurps the power of the judiciary to fashion an appropriate remedy
10 and to decide the severability of unlawful ordinances promulgated thereunder.

11 64. Section 1515-A has the additional effect of discouraging employees
12 from challenging Measure B in court, because even if they were successful, the City
13 could take the position that it has the sole and ultimate authority to decide their suit.

14 **RIGHT TO INJUNCTIVE AND DECLARATORY RELIEF**

15 65. No adequate remedy exists at law for the injuries suffered by SJPOA
16 members because the constitutional violations cannot be protected against and SJPOA
17 members' rights cannot be preserved absent injunctive relief. If this Court does not
18 grant injunctive relief of the type and for the purpose specified below, SJPOA and its
19 members will suffer further irreparable injury.

20 66. Conversely, the City will suffer no cognizable harm by continuing to
21 give effect to the Retirement Plan currently in place.

22 67. As a result, SJPOA requests that this Court preserve the *status quo*
23 *ante* by preliminarily and permanently enjoining the City from enforcing or otherwise
24 applying Measure B to its members.

25 68. An actual controversy has arisen and now exists between SJPOA and
26 the City concerning their respective rights, duties, and obligations under the
27 Retirement Plan. Plaintiff contends that by the foregoing acts and omissions, the City
28 has violated SJPOA members' rights under the California Constitution, the City

1 Charter, the Retirement Plan and the MOA, as well as the MMBA and California
2 Pension Protection Act.

3 69. SJPOA is informed and believes the City disputes the allegations
4 regarding its obligations under and violation of the law and the contractual agreements.

5 70. At all times mentioned herein, the City has been able to perform its
6 obligations under the law. Notwithstanding such ability, it failed and refused, and
7 continues to fail and refuse, to perform its duties under the law and the agreements.

8 71. SJPOA requests a judicial determination of its rights and a declaration
9 of the City's obligations under the California Constitution, the San Jose City Charter,
10 Retirement Plan and the MOA, as well as under the MMBA and California Pension
11 Protection Act. SJPOA further requests that this Court declare that Measure B is
12 unlawful and unenforceable as applied to SJPOA members currently employed by the
13 City, and that by purporting to apply Measure B to said employees the City violated its
14 obligations under the law.

15 **FIRST CAUSE OF ACTION**
16 **Impairment of Contract**
17 **Cal. Const. art. I § 9 and Cal. Civ. Code § 52.1**

18 72. Plaintiff hereby incorporates by reference the preceding paragraphs.

19 73. Article I, Section 9 of the California Constitution prohibits laws that
20 impair contracts. The City, in violation of Civil Code section 52.1³, has violated and
21 continues to violate the rights of Plaintiff's members herein alleged.

22 74. The Retirement Plan, as embodied in the San Jose Charter and
23 Municipal Code, gives rise to vested contractual rights for employees in the Plan on or
24 before June 5, 2012. Additionally, the MOA's sections on retirement benefits also
25 give additional contractual rights to SJPOA members.

26 75. Measure B substantially impairs the contractual rights of Plaintiff's
27 members.

28 ³ Civil Code section 52.1 creates a private right of action to seek redress in the Superior
Court for violation of constitutional rights.

1 76. The substantial impairment is neither reasonable nor necessary to serve
2 an important public purpose. Nor is it consistent with the theory and purpose or tied to
3 the successful operation of the Retirement System.

4 77. Measure B, as applied to current employees, is unconstitutional and
5 violates Article I, Section 9 of the California Constitution.

6 **SECOND CAUSE OF ACTION**

7 **Taking**

8 **Cal. Const. art. I § 19 and Cal. Civ. Code § 52.1**

9 78. Plaintiff hereby incorporates by reference the preceding paragraphs.

10 79. Article I, Section 19 of the California Constitution prohibits the taking
11 of private property for public use in the absence of just compensation. The City, in
12 violation of Civil Code section 52.1, has violated and continues to violate the rights of
13 Plaintiff's members herein alleged.

14 80. SJPOA members have a vested property right in the benefits provided
15 by the Retirement Plan, and in the Retirement Plan itself, in place when they began
16 working for the City, as well as any enhancements made during their service with the
17 City.

18 81. In addition, the retirement benefits are a form of promised deferred
19 compensation. Measure B thus interferes with the investment-backed expectations of
20 SJPOA members.

21 82. By taking these protected benefits without giving SJPOA members any
22 comparable advantage, commensurate benefit or compensation, Measure B violates the
23 California Constitution as a taking of property for a public purpose without just
24 compensation.

25 83. Measure B will have a devastating economic impact on individual
26 SJPOA members both now and in the future.

27 84. The substantial impairment worked by Measure B is neither reasonable
28 nor necessary to serve an important purpose.

1 **THIRD CAUSE OF ACTION**

2 **Due Process**

3 **Cal. Const. art. I § 7 and Cal. Civ. Code § 52.1**

4 85. Plaintiff hereby incorporates by reference the preceding paragraphs.

5 86. Article I, Section 7 of the California Constitution prohibits the taking
6 of property without due process. The City, in violation of Civil Code section 52.1, has
7 violated and continues to violate the rights of Plaintiff's members herein alleged.

8 87. SJPOA members have a vested property right in the benefits provided
9 by the Retirement Plan, and in the Retirement Plan itself, in place when they began
10 working for the City, as well as any enhancements made during their service with the
11 City.

12 88. By taking these protected benefits without giving SJPOA members any
13 comparable advantage, commensurate benefit or compensation, Measure B violates the
14 California Constitution as a taking of property for a public purpose without due
15 process of law.

16 **FOURTH CAUSE OF ACTION**

17 **Freedom of Speech—Right to Petition**

18 **Cal. Const. art. I §§ 2 and 3, and Cal. Civ. Code § 52.1**

19 89. Plaintiff hereby incorporates by reference the preceding paragraphs.

20 90. Article I, Sections 2 and 3 of the California Constitution guarantee the
21 rights to freedom of speech and to petition the courts for redress. The City, in
22 violation of Civil Code section 52.1, has violated and continues to violate the rights of
23 Plaintiff's members herein alleged.

24 91. Section 1514-A of Measure B violates these protections by chilling or
25 otherwise discouraging SJPOA members from exercising their right to seek redress in
26 the courts by penalizing them for bringing a meritorious and successful lawsuit.
27 Measure B provides that if Section 1506-A(b) "is determined to be illegal, invalid or
28 unenforceable as to Current Employees[.]" current employees' salaries "shall" be
reduced by "an equivalent amount of savings."

1 92. This "poison pill" unlawfully penalizes SJPOA members if they
2 succeed in a lawsuit challenging Measure B. Among other things, there is no nexus
3 between the extracted "savings" to the City by reduced employee salaries and Section
4 1506-A(b); that is, there is no requirement the "savings" be used to pay UAL. Instead,
5 these deductions are wholly punitive in nature to discourage employees' exercise of
6 their fundamental right to petition the courts.

7 93. Section 1515-A of Measure B also violates the right to petition by
8 chilling or otherwise discouraging SJPOA members from exercising their right to seek
9 redress in the courts because it gives the City Council ultimate authority to decide
10 "whether to amend the ordinance consistent with the judgment, or whether to
11 determine the section severable and ineffective." Measure B discourages employees
12 from exercising their fundamental rights to petition the courts because, regardless of
13 any successful court judgment, the City Council usurps the judiciary's role to decide
14 the remedy, i.e., amendment or severability.

15 **FIFTH CAUSE OF ACTION**
16 **Separation of Powers Doctrine**
17 **Cal. Const. art. III § 3 and Cal. Civ. Code § 52.1**

18 94. Plaintiff hereby incorporates by reference the preceding paragraphs.

19 95. Article III, Section 3 of the California Constitution provides for the
20 separation of powers between the legislative, executive, and judicial branches. The
21 City, in violation of Civil Code section 52.1, has violated and continues to violate the
22 rights of Plaintiff's members herein alleged.

23 96. Section 1515-A of Measure B violates the separation of powers
24 doctrine because it gives the City Council ultimate authority to decide "whether to
25 amend the ordinance consistent with the judgment, or whether to determine the section
26 severable and ineffective" if such ordinance is found to be "invalid, unconstitutional or
27 otherwise unenforceable." The City Council is not a court and may not decide the
28 legality of a measure it unilaterally put before the voters. Measure B thus usurps the

1 authority of the judicial branch because it allows the City Council to decide the
2 remedy if an ordinance is struck down, *i.e.*, amendment or severability.

3
4 **SIXTH CAUSE OF ACTION**
Breach of Contract

5 97. Plaintiff hereby incorporates by reference the preceding paragraphs.

6 98. The MOA is a valid and binding contract.

7 99. SJPOA members have at all times performed their duties under the
8 MOA by, among other things, serving the City of San Jose in Police Officer
9 classifications.

10 100. The City has breached the MOA by the actions and omissions alleged
11 above. Specifically, Measure B, which the City Council drafted and voted to place on
12 the June 2012 ballot as a voter initiative, denies or otherwise reduces gross and net
13 salaries, increases employee deductions, contributions, and withholdings, and
14 decreases retirement benefits agreed to in the MOA.

15 101. Additionally, the poison pill further breaches the MOA by unilaterally
16 reducing the salaries of Police Officers by as much as 16%.

17 102. SJPOA members will suffer damages, as described above, caused by
18 the City's breach of the MOA, in the form of reduced salaries and retirement benefits.

19 **SEVENTH CAUSE OF ACTION**
Violation of MMBA
20 **Gov. Code § 3512 *et seq.***

21 103. Plaintiff hereby incorporates by reference the preceding paragraphs.

22 104. The MMBA prohibits the City from taking unilateral action on matters
23 impacting wages, hours, and other terms and conditions of employment for Police
24 Officers without first providing the SJPOA with reasonable notice and an opportunity
25 to bargain, resolve any differences, and reach agreement prior to implementation.
26 Gov. Code § 3504.5. "The duty to bargain requires the public agency to refrain from
27 making unilateral changes in employees' wages and working conditions until the
28 employer and employee association have bargained to impasse." *Santa Clara County*

1 *Counsel Attorneys Assoc. v. Woodside* (1994) 7 Cal.4th 525, 537. The SJPOA and the
2 City have not bargained to impasse.

3 105. Section 1506-A of Measure B violates the MMBA both substantively
4 and procedurally because it directs that the City shall unilaterally reduce salaries by as
5 much as 16% if the VEP is "illegal, invalid or unenforceable as to Current
6 Employees," without requiring the City to bargain over such reductions and/or even if
7 bargaining were to take place it makes the amount of salary reductions non-negotiable.

8 106. Section 1512-A violates the MMBA both substantively and
9 procedurally because it unilaterally effects an increase in employee contributions for
10 retiree healthcare benefits and, consequently, reduces net salaries. It also violates the
11 MMBA because it effectively eliminates the SJPOA's ability to bargain with the City
12 over retiree healthcare benefits, when such benefits are a mandatory subject of
13 bargaining under the MMBA.

14 **EIGHTH CAUSE OF ACTION**
15 **California Pension Protection Act**
16 **Cal. Const. art. XVI, § 17 and Cal. Civ. Code § 52.1**

17 107. Plaintiff hereby incorporates by reference the preceding paragraphs.

18 108. Article XVI, section 17 of the California Constitution provides that a
19 public employee retirement board's fiduciary duties are to current and future retirees
20 and their beneficiaries. It further provides that the retirement board "shall have
21 plenary authority and fiduciary responsibility for investment of moneys and
22 administration of the system" The City, in violation of Cal. Civ. Code section
23 52.1, has violated and continues to violate the rights of plaintiff's members herein
24 alleged.

25 109. Measure B violates the California Constitution because it compromises
26 the Retirement Board's constitutionally-based fiduciary duties to SJPOA members,
27 who participate in the plan as future retirees, by compelling the Board to consider "any
28 risk to the City and its residents" in its actuarial analyses and by compelling the

1 Retirement Board to equally "ensure fair and equitable treatment for current and future
2 plan members *and taxpayers* with respect to the costs of the plans"

3 PRAYER

4 WHEREFORE, Plaintiff SJPOA prays for the following relief:

5 1. A declaration that:

6 a. Measure B cannot be applied to SJPOA members working for the
7 City on or before June 5, 2012;

8 b. the City was and is required to provide SJPOA members with the
9 retirement benefits and Retirement Plan in place when they began working for the
10 City, as well as any enhancements made during their service with the City;

11 c. the City is required to provide the retirement benefits delineated
12 in the MOA;

13 d. and, by the above-described actions and omissions, the City
14 violated its obligations.

15 2. A preliminary and permanent injunction prohibiting the City from
16 applying or otherwise enforcing any part of Measure B to SJPOA members working
17 for the City before June 5, 2012;

18 3. For any and all actual, consequential, and incidental damages as
19 against the City according to proof, including but not limited to damages that have
20 been or may be suffered by members of SJPOA and all costs incurred by SJPOA in
21 attempting to enforce the constitutional and statutory rights of the association and its
22 members;

23 4. For attorneys' fees as against the City pursuant to California Code of
24 Civil Procedure section 1021.5, Government Code section 800, or otherwise;

25 \\\

26 \\\

27 \\\

28 \\\

- 1 5. For costs of suit herein incurred; and,
2 6. For such costs and further relief as the Court deems just and proper.
3

4 Dated: July 5, 2012

5 CARROLL, BURDICK & McDONOUGH LLP

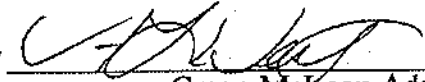
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7 By 
8 Gregg McLean Adam
9 Jonathan Yank
10 Gonzalo C. Martinez
11 Jennifer S. Stoughton
12 Amber L. West
13 Attorneys for Plaintiff
14 San Jose Police Officers' Association
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EXHIBIT P

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ENDORSED

FILED

JUN 06 2012

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

M. Rawson

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

12 ROBERT SAPIEN, MARY KATHLEEN
13 McCARTHY, THANH HO, RANDY
14 SEKANY and KEN HEREDIA

15 Plaintiffs and Petitioners,

16 vs.

17 CITY OF SAN JOSE, DEBRA FIGONE, in
18 her official capacity as City Manager of
19 the CITY OF SAN JOSE, and Does 1
20 through 15,

21 Defendants and Respondents.

22 THE BOARD OF ADMINISTRATION FOR
23 THE 1961 SAN JOSE POLICE AND FIRE
24 DEPARTMENT RETIREMENT PLAN,

25 Necessary Party in Interest

Case No. 112CV225928

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION FOR
WRIT OF MANDATE/PROHIBITION OR
OTHER APPROPRIATE WRIT RELIEF

26 By this action, plaintiffs and petitioners, active and retired members of the
27 1961 San Jose Police and Fire Department Retirement Plan (Plan), seek injunctive,
28 declaratory and writ relief to invalidate certain amendments to the San Jose City
Charter as violations of their vested contract rights.

\\

1 Plaintiffs and petitioners allege:

2 **PUBLIC EMPLOYEE PENSION RIGHTS ARE PROTECTED UNDER CALIFORNIA LAW**

3
4 1. Under California law, when a public entity creates a pension system, the
5 right to that pension immediately vests when an employee accepts employment. A
6 pension system may be modified prior to employee retirement for the limited purpose
7 of keeping the system flexible and to maintain the integrity of the system. Before
8 employee pension rights can be detrimentally affected, commensurate benefits must
9 be given the employee to prevent an unconstitutional impairment of pension
10 entitlements. When governmental action impairs vested pension rights, the courts are
11 required to enjoin such conduct.
12

13
14 2. Firefighters employed by the City since 1961 have participated in the
15 Plan provided under San Jose Municipal Code (SJMC), Chapter 3.36, §§ 3.36.010 et
16 seq., a true and correct copy of the Plan is attached as Exhibit A. On June 5, 2012, San
17 Jose voters enacted Local Measure B, a true and correct copy of which is attached as
18 Exhibit B. It amends the City Charter to impose various changes and limitations to
19 Plan benefits for active and retired firefighters. These changes and limitations
20 unconstitutionally impair Plaintiffs' and Petitioners' vested contract rights. These
21 impairments include, but are not limited to: (a) eliminating disability retirement
22 benefits by redefining eligibility to require that a firefighter be unable to perform as a
23 firefighter and "any other jobs described in the City's classification plan" in the Fire
24 Department because of the firefighter's medical condition, even if no such jobs are
25 available which the disabled firefighter can perform; (b) permitting the City Council
26 upon a declaration of a "fiscal and service level emergency" to suspend and forfeit
27
28

1 annual cost of living adjustments (COLAs) to retirees; (c) forcing employees to make
2 additional contributions for up to 50% of the pension plan's unfunded actuarially
3 accrued liability (UAAL); (d) forcing employees to make additional contributions for up
4 to 50% of the retiree medical plan's unfunded UAAL; and, (e) eliminating the
5 Supplemental Retiree Benefit Reserve (SRBR) which funds supplemental benefits to
6 annuitants and survivors.
7

8 PARTIES

9
10 3. Plaintiff and petitioner Robert Sapien is a resident, taxpayer, and
11 registered voter of the County of Santa Clara, California. Plaintiff and Petitioner
12 Sapien is a San Jose firefighter and an active participant in the Plan.

13 4. Plaintiff and petitioner Mary Kathleen McCarthy is a San Jose firefighter
14 and an active participant in the Plan.
15

16 5. Plaintiff and petitioner Thanh Ho is a San Jose firefighter and an active
17 participant in the Plan.

18 6. Plaintiff and petitioner Randy Sekany worked as a San Jose firefighter for
19 the San Jose Fire Department (SJFD) for more than 28 years before retiring in 2008.
20 Plaintiff and Petitioner Sekany is a retired annuitant of the Plan.
21

22 7. Plaintiff and petitioner Ken Heredia worked as a San Jose firefighter for
23 the SJFD for more than 29 years before retiring in 1999. Plaintiff and Petitioner
24 Heredia is a retired annuitant of the Plan.

25 8. Defendant and respondent City of San Jose (City) is a municipal
26 corporation in the State of California that operates under the authority of the California
27 Constitution and the City Charter.
28

1 9. Defendant and respondent Debra Figone is the San Jose City Manager.
2 She is sued in her official capacity. Under the City Charter, Figone is the chief
3 administrative officer of the City responsible to the Council for the administration of
4 City affairs placed under her charge including but not limited to responsibility for the
5 faithful execution of all laws, provisions of the charter and acts of the Council which
6 are subject to enforcement by her or by officers who are under her direction and
7 supervision.
8

9 10. Defendants and respondents Does 1 through 15, inclusive, are sued
10 under fictitious names. Their true name and capacities are unknown to plaintiffs and
11 petitioners. When their true names and capacities are ascertained, plaintiffs and
12 petitioners will amend this complaint by inserting their true names and capacities.
13 Plaintiffs and petitioners are informed and believe, and thereon allege, that each of the
14 fictitiously named defendant and respondent is responsible in some manner for the
15 occurrences alleged in this action, and that plaintiffs' and petitioners' damages as
16 alleged in this action are proximately caused by those defendants and respondents.
17

18 11. Necessary Party in Interest the Board of Administration of the 1961
19 Police and Fire Department Retirement Plan (Board) is the body appointed by the City
20 Council responsible for managing, administering and controlling all funds in the Plan
21 established under the SJMC and the California Constitution, art. XVI, §17. The Board
22 administers the retirement system and performs various functions related to the Plan,
23 including determining eligibility for receipt of retirement benefits, the calculation of
24 employer and employee contributions, the management and investment of the Plan's
25 funds and the distribution of pension benefits to retired firefighters.
26
27
28

JURISDICTION AND VENUE

12. Plaintiffs and petitioners bring this action for declaratory relief pursuant to Code of Civil Procedure §1060 to determine the constitutionality and validity of Measure B. Plaintiffs and Petitioners bring this action for injunctive relief pursuant to Code of Civil Procedure §§526 and 527 and Civil Code §52.1 to enjoin the implementation of Measure B because it violates plaintiffs' and petitioners' constitutional and contract rights. Plaintiffs and petitioners also bring this action as a petition for appropriate writ relief under Code of Civil Procedure §1085 to block implementation of Measure B as an unconstitutional impairment of contract under art. I, §9, an unconstitutional violation of substantive due process under art. I, §7 and an unconstitutional taking of property without just compensation under art. I, §19, respectively, of the California Constitution and the existing terms of the Plan. This action is properly filed in the County of Santa Clara pursuant to Code of Civil Procedures §§394 and 395 and Civil Code §52.1.

FACTS COMMON TO ALL CAUSES OF ACTION

13. Membership in the Plan is compulsory and a condition of employment for SJFFs. Retirement benefits under the Plan are funded by contributions from both the pension Plan's members and the City, which contributions are in turn invested for the benefit of the Plan members. Employee contributions for normal service cost and for COLAs are credited to member participation accounts. Employees make no contributions towards prior service cost, except for that portion of the contributions provided by SJMC. §3.36.1555. This Plan provision requires member contributions because of the increased benefits provided by SJMC §3.36.805 and

1 §3.36.1020.B.3 The contributions under these Plan provisions cover the member
2 cost for benefits improvements retroactively provided by an interest arbitration award
3 under Charter §1111; the contributions represent the amount of normal service
4 contributions members would have made from the effective date of the benefit
5 increase (i.e., February 4, 1996) to the date of the interest arbitration award,
6 amortized like prior service costs. In contrast, the City's contributions are credited to
7 the Plan as a whole. When investments exceed the actuarially assumed investment
8 growth rate, the City's unfunded actuarially accrued liability (UAAL) for prior service
9 costs is reduced. Moreover, when the funding ratio with the Plan's assets to liabilities
10 exceeds 100%, the positive UAAL (or over-funding of the Plan) serves as a credit in
11 favor of the City by reducing its normal cost contributions.
12

13
14 14. As adopted, Measure B amends the City Charter to alter provisions of the
15 Pension Plan as it affects contribution rates and benefits for participants and
16 annuitants. Measure B reduces, changes or eliminates existing retirement benefits
17 enjoyed by current employees and retirees and reduces retirement benefits for San
18 Jose firefighters in pertinent part, as follows:
19

20 e. Disability Retirement. Under SJMC §3.36.900 et seq., active
21 firefighters are entitled to a disability pension benefit if they can no longer work as
22 firefighters. The Board determines entitlement for a disability retirement upon proof of
23 "incapacity for the performance of duty," whether service-connected or nonservice-
24 connected if under SJMC §3.36.970 the firefighter is "incapable of assuming the
25 responsibilities and performing the duties of the position then held by him [sic] or of
26 any other person in the same classification of positions [i.e., firefighter classifications]
27 to which the city may offer to transfer him" (SJMC §3.36.900). Among other things,
28

1 Measure B, §1509-A subd. (a) and (b) limits disability retirements for current and
2 future firefighters to instances where the SJFF is unable to perform any other job
3 within the SJFD, whether such job is available and whether or not the City offers
4 such a job to the firefighter. Thus, under Measure B, if a disabled firefighter is
5 capable of performing secretarial duties in the SJFD, but no such positions are
6 available, or such position is not offered, the firefighter is ineligible for disability
7 retirement benefits. Measure B, §1509-A subd. (c) displaces the responsibility for
8 determining eligibility for disability retirement benefits from the Board, and instead
9 vests that responsibility in "an independent panel of medical experts" subject to "a
10 right of appeal to an administrative judge." Measure B does not define a "medical
11 expert" nor does it define "an administrative judge". Measure B does not afford any
12 offsetting or comparable benefit or advantage to the Plan participants for §1509-A.
13
14

15 b. Cost-of-Living Adjustments. Under SJMC §3.44.150 San Jose
16 firefighter annuitants receive an annual COLA of 3% to their monthly allowance,
17 effective each February 1st. Measure B, §1510-A authorizes the Council to suspend
18 costs of living adjustment paid to current and future retirees for up to five years, if the
19 Council adopts a resolution declaring a fiscal and service level emergency based on
20 unidentified criteria. There is no requirement under Measure B to repay annuitants for
21 the suspension or forfeiture of the COLAs. Measure B does not afford any offsetting
22 or comparable benefit or advantage to Plan participants for §1510-A.
23

24 c. Contributions. Under SJMC §3.36.1500 et seq., the Plan requires
25 the City and SJFFs to make contributions towards the normal cost of the Plan in a
26 ratio of eight (City) to three (SJFF). Absent specific exceptions resulting from
27 collective bargaining, under SJMC §3.36.1550, the City is required to make 100% of
28

1 the contributions toward the UAAL that results from insufficient Plan assets to pay
2 projected retirement costs. Under Measure B, §1506-A subd. (b), beginning July 23,
3 2013, employees will be required to make additional contributions to pay the Plan's
4 UAAL. San Jose firefighters will contribute from 4% of pay, up to a maximum of
5 16% of pay per year, but no more than half the yearly cost to pay the UAAL. There is
6 no provision for a reduction in firefighter contributions in the event that the UAAL
7 declines to less than current amounts. Moreover, under Measure B, §1514-A, if a
8 court determines that the provisions of §1506-A subd. (b) are unenforceable,
9 equivalent monetary "savings" will be imposed on employees by "pay reductions".
10 Measure B does not afford any offsetting or comparable benefit or advantage to Plan
11 participants for §1506-A.
12

13
14 d. Retiree Health Benefits. Under SJMC §3.36.575, the Plan
15 establishes medical benefit accounts within the retirement fund to provide retiree
16 medical benefits, including benefits for sickness, accident, hospitalization, dental or
17 medical expenses. Contributions for the normal cost of these benefits are made by
18 the City and the firefighters for dental benefits in the ratio of three (City) to one
19 (firefighter) and for medical benefits in the ratio of one (City) to one (firefighter).
20 SJMC 3.36.1900 et seq. sets out eligibility criteria for medical benefits annuitants and
21 allocates the costs of premiums for medical benefits. Under Measure B, §1512-A, the
22 cost burden for unfunded liabilities for these benefits is shifted from the City to the
23 firefighters since they "must contribute a minimum of 50% of the cost of retiree
24 healthcare, including both normal cost and unfunded liabilities." Measure B does not
25 afford any offsetting or comparable benefit or advantage to Plan participants for
26 §1512-A.
27
28

e. Supplemental Retirement Benefits. Under SJMC §3.36.580 a "gain sharing" segregated fund called the Supplemental Retiree Benefits Reserve (SRBR) is established which requires the allocation of a portion of excess Plan investment income to fund supplemental benefits to annuitants. Measure B, §1511-A discontinues the SRBR, and returns the SRBR segregated funds to the Plan's general fund and prohibits the payment of supplemental benefits out of the SRBR or other Plan assets. Measure B does not afford any offsetting or comparable benefit or advantage to Plan participants for §1511-A.

15. Plaintiffs and petitioners have no plain, speedy and adequate remedy in the ordinary course of law, other than the relief sought in this complaint and petition, because the constitutional violations at issue cannot be protected against and plaintiffs' and petitioners' rights cannot be preserved absent injunctive or writ relief.

16. Defendants and respondents implementation of the foregoing provisions of Measure B is wrongful conduct, and unless and until enjoined and restrained by order of this court, will cause great and irreparable injury to plaintiffs and petitioners by impairing provision of vested pension rights.

17. Plaintiffs and petitioners have no adequate remedy at law for the wrongful implementation of the foregoing provisions of Measure B because it will be impossible to determine the precise measure of damages that will be suffered if defendants' and respondents' conduct is not restrained, and plaintiffs and petitioners will be forced to institute a multiplicity of suits to obtain adequate compensation for each individual's injuries.

18. Defendants and respondents have a non-discretionary legal, constitutional and contractual duty to continue in effect all vested Plan provisions, rights and

benefits to plaintiffs and petitioners. At all times herein mentioned, defendants and respondents have been able to provide all provisions, rights and benefits under the Plan in effect as of June 4, 2012 to plaintiffs and petitioners.

**FIRST CAUSE OF ACTION
REQUEST FOR DECLARATORY RELIEF**

19. Plaintiffs and petitioners hereby incorporate by reference the preceding paragraphs.

20. Article I, §7 of the California Constitution prohibits the taking of property without due process.

21. Article I, §9 of the California Constitution prohibits laws that impair contracts.

22. Article I, §19 of the California Constitution prohibits the taking of private property for public use in the absence of just compensation.

23. An actual controversy has arisen and now exists between plaintiffs and petitioners and defendants and respondents relative to their respective rights and duties in that plaintiffs and petitioners contend that Measure B is unconstitutional, invalid and unenforceable, both on its face and as construed by defendants and respondents, because it impermissibly impairs vested contract rights to pension benefits under the Plan. The impairment is neither reasonable nor material to the theory of the pension system and its successful operation. It changes pension plan benefits in a manner which results in a disadvantage to employees and annuitants without comparable new advantages.

\\

1 24. Plaintiffs' and petitioners require a declaration as to the validity of
2 Measure B, both on its face and as applied to plaintiffs' and petitioners' status as
3 plan members. A judicial declaration is necessary and appropriate at this time so that
4 plaintiffs and petitioners may ascertain their rights and duties.

5 25. The City Council prepared and authorized Measure B, and based thereon,
6 plaintiffs and petitioners are informed and believe, and upon such information and
7 belief allege that the defendants and respondents dispute the allegations regarding
8 the invalidity of Measure B, their obligations under law, and the alleged violations of
9 the law.
10

11
12 **SECOND CAUSE OF ACTION**
13 **IMPAIRMENT OF CONTRACT**
14 **[CALIFORNIA CONSTITUTION ARTICLE I, §9]**

15 26. Plaintiffs and petitioners hereby incorporate by reference the preceding
16 paragraphs.

17 27. As set forth in the SJMC, the Plan gives rise to vested contractual rights
18 for employees both active participants and annuitants, prior to June 5, 2012.
19

20 28. Measure B impairs the contractual rights of plaintiffs and petitioners.

21 29. By impairing these contractual rights without giving plaintiffs and
22 petitioners any comparable advantage, commensurate benefit or compensation,
23 Measure B as applied to existing plan participants, both current San Jose firefighters
24 and annuitants, is unconstitutional and violates Article I, §9 of the California
25 Constitution.
26
27
28

THIRD CAUSE OF ACTION
SUBSTANTIVE DUE PROCESS
[CALIFORNIA CONSTITUTION ARTICLE I, §7]

30. Plaintiffs and petitioners hereby incorporate by reference the preceding paragraphs.

31. Article I, §7 of the California Constitution prohibits the taking of property for a public purpose without due process of law.

32. Plaintiffs and petitioners have vested property right in the benefits provided by the Plan, and in the Plan itself, in place when they began working for the City, as well as any enhancements made during their service with the City.

33. By taking these protected benefits without giving plaintiffs and petitioners any comparable advantage, commensurate benefit or compensation, Measure B violates Article I, §7 of the California Constitution.

FOURTH CAUSE OF ACTION
TAKING
[CALIFORNIA CONSTITUTION ARTICLE I, §19]

34. Plaintiffs and petitioners hereby incorporate by reference the preceding paragraphs.

35. Article I, §19 of the California Constitution prohibits the taking of private property for public use in the absence of just compensation.

36. Plaintiffs and petitioners have vested property right in the benefits provided by the Plan, and in the Plan itself, in place when they began working for the City, as well as any enhancements made during their service with the City. In

1 addition, the retirement benefits are a form of promise for compensation.

2 37. By taking these protected benefits without giving plaintiffs and
3 petitioners any comparable advantage, commensurate benefit or compensation, the
4 provisions of Measure B violates Article I, §19 of the California Constitution as to the
5 taking of property for a public purpose without just compensation.
6

7 **FIFTH CAUSE OF ACTION**

8 **PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE WRIT
RELIEF**

9 1. Plaintiffs and petitioners hereby incorporate by reference the preceding
10 paragraphs.

11 2. Plaintiffs and petitioners are informed and believe, and upon such
12 information and belief allege that upon the effective date of Measure B, if not before,
13 defendants and respondents will implement the provisions Measure B and will not
14 abide by all Plan provisions, rights and benefits in effect as of June 4, 2012.
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiffs and petitioners pray for the following relief:

18 1. A declaration that:

19 a. The provisions of Measure B cannot be applied to plaintiffs and
20 petitioners because it violates their constitutional and contractual rights; and,

21 b. The defendants and respondents were and are required to provide
22 plaintiffs and petitioners with the Plan provisions, rights and benefits in place when
23 they began working for the City, as well as any enhancements made during their
24 service with the City.
25

26 \ \ \

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1 2. A preliminary and permanent injunction prohibiting the defendants and
2 respondents and the Board from applying or otherwise enforcing any part of Measure
3 B to plaintiffs and petitioners, inclusive of the edmonition required under Civil Code,
4 §52.1;

5 3. A preemptory writ mandating defendants and respondents and the Board
6 apply all Plan provisions, rights and banefits in effect as of June 4, 2012 to plaintiffs
7 and petitioners and prohibiting the defendants and respondents from applying or
8 otherwise implementing Measure B to plaintiffs and petitioners;

9 4. Any and all actual, consequential and incidental damages according to
10 proof, including but not limited to damages that have been or made be suffered by
11 plaintiffs and petitioners and all costs incurred by plaintiffs and petitioners in an
12 attempt to enforce the constitutional, statutory and contractual rights and described
13 herein;

14 5. For attorneys' fees pursuant to California Civil Code §52.1, Coda of Civil
15 Procedure §1021.5, Government Code §800 or otherwise;

16 6. For costs of suit herein incurred; and

17 7. For such costs and further relief as the Court deems just and proper.

18 Dated: June 5, 2012

19 WYLIE, McBRIDE,
20 PLATTEN & RENNER

21 

22 CHRISTOPHER E. PLATTEN

23 Attorneys for Plaintiffs and Petitioners
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EXHIBIT Q

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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

TERESA HARRIS, JON REGER and
MOSES SERRANO

Plaintiffs and Petitioners,

vs.

CITY OF SAN JOSE, DEBRA FIGONE, in
her official capacity as City Manager of
the CITY OF SAN JOSE, and Does 1
through 15,

Defendants and Respondents.

THE BOARD OF ADMINISTRATION FOR
THE 1975 FEDERATED CITY
EMPLOYEES' RETIREMENT PLAN,

Necessary Party in Interest

ENDORSED
FILED

JUL 03 2012

DAVID H. YAMASAKI

Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara

BY M. Dawson DEPUTY

Case No.: 1-12-CV-226570

FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF
AND PETITION FOR WRIT OF
MANDATE/PROHIBITION OR OTHER
APPROPRIATE WRIT RELIEF

By this action, plaintiffs and petitioners, active and retired members of the 1975 Federated City Employees' Retirement Plan (Plan), seek injunctive, declaratory and writ relief to invalidate certain amendments to the San Jose City Charter as violations of their vested contract rights.

Plaintiffs and petitioners allege:

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2 CHRISTOPHER E. PLATTEN, SBN 111971
3 MARK S. RENNER, ESQ., SBN 121008
4 Wylie, McBride, Platten & Renner
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10 Attorney for Plaintiffs and Petitioners
11 TERESA HARRIS, JON REGER,
12 and MOSES SERRANO

13 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**

15 TERESA HARRIS, JON REGER and
16 MOSES SERRANO

17 Plaintiffs and Petitioners,

18 vs.

19 CITY OF SAN JOSE, DEBRA FIGONE, in
20 her official capacity as City Manager of
21 the CITY OF SAN JOSE, and Does 1
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24 THE BOARD OF ADMINISTRATION FOR
25 THE 1975 FEDERATED CITY
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28 By this action, plaintiffs and petitioners, active and retired members of the 1975
Federated City Employees' Retirement Plan (Plan), seek injunctive, declaratory and
writ relief to invalidate certain amendments to the San Jose City Charter as violations
of their vested contract rights.

Plaintiffs and petitioners allege:

PUBLIC EMPLOYEE PENSION RIGHTS ARE PROTECTED UNDER CALIFORNIA LAW

1. Under California law, when a public entity creates a pension system, the right to that pension vests when an employee commences employment. A pension system may be modified prior to employee retirement for the limited purpose of keeping the system flexible and to maintain the integrity of the system. Before employee pension rights can be detrimentally affected, commensurate benefits must be given the employee to prevent an unconstitutional impairment of pension entitlements. When governmental action impairs vested pension rights, the courts are required to enjoin such conduct.

2. Non-safety personnel employed by the City of San Jose since 1975 have participated in the Plan provided under San Jose Municipal Code (SJMC), Chapter 3.28, §§ 3.28.10 et seq., a true and correct copy of the Plan is attached as Exhibit A. On June 5, 2012, San Jose voters enacted Local Measure B, a true and correct copy of which is attached as Exhibit B. It amends the City Charter to impose various changes and limitations to Plan benefits for active and retired employees. These changes and limitations unconstitutionally impair plaintiffs' and petitioners' vested contract rights. These impairments include, but are not limited to: (a) eliminating disability retirement benefits by redefining eligibility to require that an employee be unable to perform the employee's job *and* "any other jobs described in the City's classification plan" because of the employee's medical condition, even if no such jobs are available which the disabled employee can perform; (b) permitting the City Council upon a declaration of a "fiscal and service level emergency" to suspend and forfeit annual cost of living adjustments (COLAs) to retirees; (c) forcing employees to make additional contributions for up to 50% of the pension plan's unfunded actuarially accrued liability (UAAL); (d) forcing employees to make additional contributions for up to 50% of the retiree medical plan's unfunded UAAL; and, (e) eliminating the Supplemental Retiree Benefit Reserve (SRBR) which funds supplemental benefits to annuitants and survivors.

PARTIES

3. Plaintiff and petitioner Teresa Harris is a San Jose Plant Mechanic at the Water Pollution Control Plant and an active participant in the Plan.

4. Plaintiff and petitioner Jon Reger is a San Jose Environmental Inspector and an active participant in the Plan.

5. Plaintiff and petitioner Moses Serrano worked as a San Jose Senior Maintenance Worker at the Airport for 30 years before retiring in 2010. Plaintiff and petitioner Serrano is a retired annuitant of the Plan.

6. Defendant and respondent City of San Jose (City) is a municipal corporation in the State of California that operates under the authority of the California Constitution and the City Charter.

7. Defendant and respondent Debra Figone is the San Jose City Manager. She is sued in her official capacity. Under the City Charter, Figone is the chief administrative officer of the City responsible to the Council for the administration of City affairs placed under her charge including but not limited to responsibility for the faithful execution of all laws, provisions of the charter and acts of the Council which are subject to enforcement by her or by officers who are under her direction and supervision.

8. Defendants and respondents Does 1 through 15, inclusive, are sued under fictitious names. Their true name and capacities are unknown to plaintiffs and petitioners. When their true names and capacities are ascertained, plaintiffs and petitioners will amend this complaint by inserting their true names and capacities. Plaintiffs and petitioners are informed and believe, and thereon allege, that each of the fictitiously named defendant and respondent is responsible in some manner for the occurrences alleged in this action, and that plaintiffs' and petitioners' damages as alleged in this action are proximately caused by those defendants and respondents.

9. Necessary Party in Interest the Board of Administration of the 1975 Federated City Employees' Retirement Plan (Board) is the body appointed by the City

1 Council responsible for managing, administering and controlling all funds in the Plan
2 established under the SJMC and the California Constitution, art. XVI, § 17. The Board
3 administers the retirement system and performs various functions related to the Plan,
4 including determining eligibility for receipt of retirement benefits, the calculation of
5 employer and employee contributions, the management and investment of the Plan's
6 funds and the distribution of pension benefits to retired employees.

7 JURISDICTION AND VENUE

8 10. Plaintiffs and petitioners bring this action for declaratory relief pursuant to
9 Code of Civil Procedure § 1060 to determine the constitutionality and validity of
10 Measure B. Plaintiffs and petitioners bring this action for injunctive relief pursuant to
11 Code of Civil Procedure §§ 526 and 527 and Civil Code § 52.1 to enjoin the
12 implementation of Measure B because it violates plaintiffs' and petitioners'
13 constitutional and contract rights. Plaintiffs and petitioners also bring this action as a
14 petition for appropriate writ relief under Code of Civil Procedure § 1085 to block
15 implementation of Measure B as an unconstitutional impairment of contract under art.
16 I, § 9, an unconstitutional violation of substantive due process under art. I, § 7 and an
17 unconstitutional taking of property without just compensation under art. I, § 19,
18 respectively, of the California Constitution and the existing terms of the Plan. This
19 action is properly filed in the County of Santa Clara pursuant to Code of Civil
20 Procedure §§ 394 and 395 and Civil Code § 52.1.

21 FACTS COMMON TO ALL CAUSES OF ACTION

22 11. Membership in the Plan is compulsory and a condition of employment for
23 all non-safety employees. Retirement benefits under the Plan are funded by contri-
24 butions from both the employees and the City, which contributions are in turn
25 invested for the benefit of the Plan members. Employee contributions for normal
26 service cost and for COLAs are credited to member participation accounts. Employees
27 make no contributions towards prior service cost. When investments exceed the
28 actuarially assumed investment growth rate, the City's unfunded actuarially accrued

1 liability (UAAL) for prior service costs is reduced. Moreover, when the funding ratio
2 with the Plan's assets to liabilities exceeds 100%, the positive UAAL (or over-funding
3 of the Plan) serves as a credit in favor of the City by reducing its normal cost
4 contributions.

5 12. As adopted, Measure B amends the City Charter to alter provisions of the
6 Plan as it affects contribution rates and benefits for participants and annuitants.
7 Measure B reduces, changes or eliminates existing retirement benefits enjoyed by
8 current non-safety employees and retirees in pertinent part, as follows:

9 a. Disability Retirement. Under SJMC § 3.28.1200 et seq., active
10 employees are entitled to a disability pension benefit if they can no longer perform
11 their jobs. The Board determines entitlement for a disability retirement upon proof of
12 "incapacity for the performance of duty," whether service-connected or non-service-
13 connected if the employee is "incapable of assuming the responsibilities and
14 performing the duties of the position then held by him [sic] or of any other person in
15 the same classification of positions to which the city may offer to transfer him"
16 (SJMC § 3.28.1210). Among other things, Measure B, § 1509-A subd. (a) and (b)
17 limits disability retirements for current and future employees to instances where the
18 employee is unable to perform any other job within the City, whether such job is
19 available and whether or not the City offers such a job to the employee. Thus, under
20 Measure B, if a disabled Water Pollution Plant Mechanic is capable of performing
21 secretarial duties, but no such positions are available, or such position is not offered,
22 the Plant Mechanic is ineligible for disability retirement benefits. Measure B, § 1509-A
23 subd. (c) displaces the responsibility for determining eligibility for disability retirement
24 benefits from the Board, and instead vests that responsibility in "an independent panel
25 of medical experts" subject to "a right of appeal to an administrative judge." Measure
26 B does not define a "medical expert" nor does it define "an administrative judge".
27 Measure B does not afford any offsetting or comparable benefit or advantage to the
28 Plan participants for § 1509-A.

1 b. Cost-of-Living Adjustments. Under SJMC §3.44.150 Plan
2 annuitants and survivors receive an annual COLA of 3% to their monthly allowance,
3 effective each February 1st. Measure B, § 1510-A authorizes the Council to suspend
4 costs of living adjustment paid to current and future retirees for up to five years, if the
5 Council adopts a resolution declaring a fiscal and service level emergency based on
6 unidentified criteria. There is no requirement under Measure B to repay annuitants for
7 the suspension or forfeiture of the COLAs. Measure B does not afford any offsetting
8 or comparable benefit or advantage to Plan participants for § 1510-A.

9 c. Contributions. Under SJMC § 3.36.1500 et seq., the Plan requires
10 the City and employees to make contributions towards the normal cost of the Plan in a
11 ratio of eight (City) to three (employee). The City is required to make 100% of the
12 contributions toward the UAAL that results from insufficient Plan assets to pay
13 projected retirement costs. Under Measure B, § 1506-A subd. (b), beginning July 23,
14 2013, employees will be required to make additional contributions to pay the Plan's
15 UAAL. San Jose employees will contribute from 4% of pay, up to a maximum of 16%
16 of pay per year, but no more than half the yearly cost to pay the UAAL. There is no
17 provision for a reduction in employee contributions in the event that the UAAL
18 declines to less than current amounts. Moreover, under Measure B, § 1514-A, if a
19 court determines that the provisions of § 1506-A subd. (b) are unenforceable,
20 equivalent monetary "savings" will be imposed on employees by "pay reductions".
21 Measure B does not afford any offsetting or comparable benefit or advantage to Plan
22 participants for § 1506-A.

23 d. Retiree Health Benefits. Under SJMC §§ 3.28.380 et seq. and
24 3.28.200 et seq., the Plan establishes medical benefit accounts within the retirement
25 fund to provide retiree medical benefits, including benefits for sickness, accident,
26 hospitalization, dental or medical expenses. Contributions for the normal cost of these
27 benefits are made by the City and the employees for dental benefits in the ratio of
28 three (City) to one (employee) and for medical benefits in the ratio of one (City) to one

1 (employee). SJMC § 3.28.380 et seq. sets out eligibility criteria for medical benefits
2 annuitants and allocates the costs of premiums for medical benefits. Under Measure
3 B, § 1512-A, the cost burden for unfunded liabilities for these benefits is shifted from
4 the City to the employees since they "must contribute a minimum of 50% of the cost
5 of retiree healthcare, including both normal cost and unfunded liabilities." Measure B
6 does not afford any offsetting or comparable benefit or advantage to Plan participants
7 for § 1512-A.

8 e. Supplemental Retirement Benefits. Under SJMC § 3.28.340 a
9 "gain sharing" segregated fund called the Supplemental Retiree Benefits Reserve
10 (SRBR) is established which requires the allocation of a portion of excess Plan
11 investment income to fund supplemental benefits to annuitants. Measure B, § 1511-A
12 discontinues the SRBR, and returns the SRBR segregated funds to the Plan's general
13 fund and prohibits the payment of supplemental benefits out of the SRBR or other Plan
14 assets. Measure B does not afford any offsetting or comparable benefit or advantage
15 to Plan participants for § 1511-A.

16 13. Plaintiffs and petitioners have no plain, speedy and adequate remedy in
17 the ordinary course of law, other than the relief sought in this complaint and petition,
18 because the constitutional violations at issue cannot be protected against and
19 plaintiffs' and petitioners' rights cannot be preserved absent injunctive or writ relief.

20 14. Defendants and respondents' implementation of the foregoing provisions
21 of Measure B is wrongful conduct, and unless and until enjoined and restrained by
22 order of this court, will cause great and irreparable injury to plaintiffs and petitioners
23 by impairing provision of vested pension rights.

24 15. Plaintiffs and petitioners have no adequate remedy at law for the
25 wrongful implementation of the foregoing provisions of Measure B because it will be
26 difficult to determine the precise measure of damages that will be suffered if
27 defendants' and respondents' conduct is not restrained, and plaintiffs and petitioners
28 will be forced to institute a multiplicity of suits to obtain adequate compensation for

1 each individual's injuries.

2 16. Defendants and respondents have a non-discretionary legal, constitutional
3 and contractual duty to continue in effect all vested Plan provisions, rights and
4 benefits to plaintiffs and petitioners. At all times herein mentioned, defendants and
5 respondents have been able to provide all provisions, rights and benefits under the
6 Plan in effect as of June 4, 2012 to plaintiffs and petitioners.

7 **FIRST CAUSE OF ACTION**
8 **REQUEST FOR DECLARATORY RELIEF**

9 17. Plaintiffs and petitioners hereby incorporate by reference the preceding
10 paragraphs.

11 18. Article I, § 7 of the California Constitution prohibits the taking of property
12 without due process.

13 19. Article I, § 9 of the California Constitution prohibits laws that impair
14 contracts.

15 20. Article I, § 19 of the California Constitution prohibits the taking of private
16 property for public use in the absence of just compensation.

17 21. An actual controversy has arisen and now exists between plaintiffs and
18 petitioners and defendants and respondents relative to their respective rights and
19 duties in that plaintiffs and petitioners contend that Measure B is unconstitutional,
20 invalid and unenforceable, both on its face and as construed by defendants and
21 respondents, because it impermissibly impairs vested contract rights to pension
22 benefits under the Plan. The impairment is neither reasonable nor material to the
23 theory of the pension system and its successful operation. It changes pension plan
24 benefits in a manner which results in a disadvantage to employees and annuitants
25 without comparable new advantages.

26 22. Plaintiffs' and petitioners require a declaration as to the validity of
27 Measure B, both on its face and as applied to plaintiffs' and petitioners' status as plan
28 members. A judicial declaration is necessary and appropriate at this time so that

1 plaintiffs and petitioners may ascertain their rights and duties.

2 23. The City Council prepared and authorized Measure B, and based thereon,
3 plaintiffs and petitioners are informed and believe, and upon such information and
4 belief allege that the defendants and respondents dispute the allegations regarding the
5 invalidity of Measure B, their obligations under law, and the alleged violations of the
6 law.

7 **SECOND CAUSE OF ACTION**
8 **IMPAIRMENT OF CONTRACT**
9 **[CALIFORNIA CONSTITUTION ARTICLE I, § 9]**

10 24. Plaintiffs and petitioners hereby incorporate by reference the preceding
11 paragraphs.

12 25. As set forth in the SJMC, the Plan gives rise to vested contractual rights
13 for employees both active participants and annuitants, prior to June 5, 2012.

14 26. Measure B Impairs the contractual rights of plaintiffs and petitioners.

15 27. By impairing these contractual rights without giving plaintiffs and
16 petitioners any comparable advantage, commensurate benefit or compensation,
17 Measure B as applied to existing plan participants, both current non-safety employees
18 and annuitants, is unconstitutional and violates Article I, § 9 of the California
19 Constitution.

20 **THIRD CAUSE OF ACTION**
21 **SUBSTANTIVE DUE PROCESS**
22 **[CALIFORNIA CONSTITUTION ARTICLE I, § 7]**

23 28. Plaintiffs and petitioners hereby incorporate by reference the preceding
24 paragraphs.

25 29. Article I, § 7 of the California Constitution prohibits the taking of property
26 for a public purpose without substantive due process of law.

27 30. Plaintiffs and petitioners have vested property right in the benefits
28 provided by the Plan, and in the Plan itself, in place when they began working for the
City, as well as any enhancements made during their service with the City.

31. By taking these protected benefits without giving plaintiffs and

1 petitioners any comparable advantage, commensurate benefit or compensation,
2 Measure B violates Article I, § 7 of the California Constitution.

3 **FOURTH CAUSE OF ACTION**
4 **TAKING**
5 **[CALIFORNIA CONSTITUTION ARTICLE I, § 19]**

6 32. Plaintiffs and petitioners hereby incorporate by reference the preceding
7 paragraphs.

8 33. Article I, § 19 of the California Constitution prohibits the taking of private
9 property for public use in the absence of just compensation.

10 34. Plaintiffs and petitioners have vested property right in the benefits
11 provided by the Plan, and in the Plan itself, in place when they began working for the
12 City, as well as any enhancements made during their service with the City. In
13 addition, the retirement benefits are a form of promise for compensation.

14 35. By taking these protected benefits without giving plaintiffs and
15 petitioners any comparable advantage, commensurate benefit or compensation, the
16 provisions of Measure B violates Article I, § 19 of the California Constitution as to the
17 taking of property for a public purpose without just compensation.

18 **FIFTH CAUSE OF ACTION**
19 **PETITION FOR WRIT OF MANDATE, PROHIBITION**
20 **OR OTHER APPROPRIATE WRIT RELIEF**

21 36. Plaintiffs and petitioners hereby incorporate by reference the preceding
22 paragraphs.

23 37. Plaintiffs and petitioners are informed and believe, and upon such
24 information and belief allege that upon the effective date of Measure B, if not before,
25 defendants and respondents will implement the provisions Measure B and will not
26 abide by all Plan provisions, rights and benefits in effect as of June 4, 2012.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, plaintiffs and petitioners pray for the following relief:

1. A declaration that:

1 a. a. The provisions of Measure B cannot be applied to plaintiffs and
2 petitioners because it violates their constitutional and contractual rights; and,

3 b. b. The defendants and respondents were and are required to
4 provide plaintiffs and petitioners with the Plan provisions, rights and benefits in place
5 when they began working for the City, as well as any enhancements made during
6 their service with the City.

7 2. A preliminary and permanent injunction prohibiting the defendants and
8 respondents and the Board from applying or otherwise enforcing any part of Measure
9 B to plaintiffs and petitioners, inclusive of the admonition required under Civil Code,
10 § 52.1;

11 3. A preemptory writ mandating defendants and respondents and the Board
12 apply all Plan provisions, rights and benefits in effect as of June 4, 2012 to plaintiffs
13 and petitioners and prohibiting the defendants and respondents from applying or
14 otherwise implementing Measure B to plaintiffs and petitioners;

15 4. Any and all actual, consequential and incidental damages according to
16 proof, including but not limited to damages that have been or made be suffered by
17 plaintiffs and petitioners and all costs incurred by plaintiffs and petitioners in an
18 attempt to enforce the constitutional, statutory and contractual rights and described
19 herein;

20 5. For attorneys' fees pursuant to California Civil Code § 52.1, Code of Civil
21 Procedure § 1021.5, Government Code § 800 or otherwise;

22 6. For costs of suit herein incurred; and

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1 7. For such costs and further relief as the Court deems just and proper.

2 Dated: July 2, 2012

3 WYLIE, McBRIDE,
4 PLATTEN & RENNER

5 

6 CHRISTOPHER E. PLATTEN
7 Attorney for Plaintiffs and Petitioners TERESA HARRIS,
8 JON REGER and MOSES SERRANO

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EXHIBIT R

1 JOHN McBRIE, SBN 36458
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10 Attorney for Plaintiffs and Petitioners
11 JOHN MUKHAR, DALE DAPP, JAMES ATKINS,
12 WILLIAM BUFFINGTON and KIRK PENNINGTON

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ATKINS, WILLIAM BUFFINGTON and
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EMPLOYEES' RETIREMENT PLAN,

Necessary Party in Interest

Case No.

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WRIT OF MANDATE/PROHIBITION OR
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Federated City Employees' Retirement System (Plan), seek injunctive, declaratory and
writ relief to invalidate certain amendments to the San Jose City Charter as violations
of their vested contract rights.

Plaintiffs and petitioners allege:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF
MANDATE/PROHIBITION OR OTHER APPROPRIATE WRIT RELIEF; Case No.

(ENDORSED)
FILED
JUN 15 2012

L. Barajas
Deputy
Superior Court of Santa Clara

112CV226574

PUBLIC EMPLOYEE PENSION RIGHTS ARE PROTECTED UNDER CALIFORNIA LAW

1. Under California law, when a public entity creates a pension system, the right to that pension immediately vests when an employee accepts employment. A pension system may be modified prior to employee retirement for the limited purpose of keeping the system flexible and to maintain the integrity of the system. Before employee pension rights can be detrimentally affected, commensurate benefits must be given the employee to prevent an unconstitutional impairment of pension entitlements. When governmental action impairs vested pension rights, the courts are required to enjoin such conduct.

2. Non-safety personnel employed by the City of San Jose since 1975 have participated in the Plan provided under San Jose Municipal Code (SJMC), Chapter 3.28, §§ 3.28.010 et seq., a true and correct copy of the Plan is attached as Exhibit A. On June 5, 2012, San Jose voters enacted Local Measure B, a true and correct copy of which is attached as Exhibit B. It amends the City Charter to impose various changes and limitations to Plan benefits for active and retired employees. These changes and limitations unconstitutionally impair plaintiffs' and petitioners' vested contract rights. These impairments include, but are not limited to: (a) eliminating disability retirement benefits by redefining eligibility to require that an employee be unable to perform the employee's job *and* "any other jobs described in the City's classification plan" because of the employee's medical condition, even if no such jobs are available which the disabled employee can perform; (b) permitting the City Council upon a declaration of a "fiscal and service level emergency" to suspend and forfeit annual cost of living adjustments (COLAs) to retirees; (c) forcing employees to make additional contributions for up to 50% of the pension plan's unfunded actuarially accrued liability (UAAL); (d) forcing employees to make additional contributions for up to 50% of the retiree medical plan's unfunded UAAL; and, (e) eliminating the Supplemental Retiree Benefit Reserve (SRBR) which funds supplemental benefits to annuitants and survivors.

PARTIES

1 3. Plaintiff and petitioner John Mukhar is a resident, taxpayer, and
2 registered voter of the County of Santa Clara, California. Plaintiff and Petitioner
3 Mukhar is a San Jose Services Engineer and an active participant in the Plan.

4 4. Plaintiff and petitioner Dale Dapp is a San Jose Maintenance
5 Superintendent and an active participant in the Plan.

6 5. Plaintiff and petitioner James Atkins worked as Plant Mechanical
7 Supervisor for the City of San Jose for more than 30 years before retiring in 2009.
8 Plaintiff and petitioner Atkins is a retired annuitant of the Plan.

9 6. Plaintiff and petitioner William Buffington worked as a San Jose Plant
10 Mechanical Supervisor for the City of San Jose for more than 30 years before retiring
11 in 2011. Plaintiff and petitioner Buffington is a retired annuitant of the Plan.

12 7. Plaintiff and petitioner Kirk Pennington worked as an Electrical
13 Maintenance Superintendent for the City of San Jose for more than 22 years before
14 retiring in 2009. Plaintiff and petitioner Pennington is a retired annuitant of the Plan.

15 8. Defendant and respondent City of San Jose (City) is a municipal
16 corporation in the State of California that operates under the authority of the California
17 Constitution and the City Charter.

18 9. Defendant and respondent Debra Figone is the San Jose City Manager.
19 She is sued in her official capacity. Under the City Charter, Figone is the chief
20 administrative officer of the City responsible to the Council for the administration of
21 City affairs placed under her charge including but not limited to responsibility for the
22 faithful execution of all laws, provisions of the charter and acts of the Council which
23 are subject to enforcement by her or by officers who are under her direction and
24 supervision.

25 10. Defendants and respondents Does 1 through 15, inclusive, are sued
26 under fictitious names. Their true name and capacities are unknown to plaintiffs and
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1 petitioners will amend this complaint by inserting their true names and capacities.
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3 fictitiously named defendant and respondent is responsible in some manner for the
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7 Federated City Employees' Retirement Plan (Board) is the body appointed by the City
8 Council responsible for managing, administering and controlling all funds in the Plan
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1 performing secretarial duties but no such positions are available, or such position is
2 not offered, the engineer is ineligible for disability retirement benefits. Measure B,
3 § 1509-A subd. (c) displaces the responsibility for determining eligibility for disability
4 retirement benefits from the Board, and instead vests that responsibility in "an
5 independent panel of medical experts" subject to "a right of appeal to an
6 administrative judge." Measure B does not define a "medical expert" nor does it define
7 "an administrative judge". Measure B does not afford any offsetting or comparable
8 benefit or advantage to the Plan participants for § 1509-A.

9 b. Cost-of-Living Adjustments. Under SJMC § 3.44.150 Plan
10 annuitants and survivors receive an annual COLA of 3% to their monthly allowance,
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20 contributions toward the UAAL that results from insufficient Plan assets to pay
21 projected retirement costs. Under Measure B, § 1506-A subd. (b), beginning July 23,
22 2013, employees will be required to make additional contributions to pay the Plan's
23 UAAL. San Jose employees will contribute from 4% of pay, up to a maximum of 16%
24 of pay per year, but no more than half the yearly cost to pay the UAAL. There is no
25 provision for a reduction in employee contributions in the event that the UAAL
26 declines to less than current amounts. Moreover, under Measure B, § 1514-A, if a
27 court determines that the provisions of § 1506-A subd. (b) are unenforceable,
28 equivalent monetary "savings" will be imposed on employees by "pay reductions".

1 Measure B does not afford any offsetting or comparable benefit or advantage to Plan
2 participants for § 1506-A.

3 d. Retiree Health Benefits. Under SJMC § 3.28.380 et seq. and
4 3,28.2000 et seq., the Plan establishes medical benefit accounts within the retirement
5 fund to provide retiree medical benefits, including benefits for sickness, accident,
6 hospitalization, dental or medical expenses. Contributions for the normal cost of these
7 benefits are made by the City and the employees for dental benefits in the ratio of
8 three (City) to one (employee) and for medical benefits in the ratio of one (City) to one
9 (employee). SJMC § 3.28.380 et seq. sets out eligibility criteria for medical benefits
10 annuitants and allocates the costs of premiums for medical benefits. Under Measure
11 B, § 1512-A, the cost burden for unfunded liabilities for these benefits is shifted from
12 the City to the employees since they "must contribute a minimum of 50% of the cost
13 of retiree healthcare, including both normal cost and unfunded liabilities." Measure B
14 does not afford any offsetting or comparable benefit or advantage to Plan participants
15 for § 1512-A.

16 e. Supplemental Retirement Benefits. Under SJMC § 3.28.340 a
17 "gain sharing" segregated fund called the Supplemental Retiree Benefits Reserve
18 (SRBR) is established which requires the allocation of a portion of excess Plan
19 investment income to fund supplemental benefits to annuitants. Measure B, § 1511-A
20 discontinues the SRBR, and returns the SRBR segregated funds to the Plan's general
21 fund and prohibits the payment of supplemental benefits out of the SRBR or other Plan
22 assets. Measure B does not afford any offsetting or comparable benefit or advantage
23 to Plan participants for § 1511-A.

24 15. Plaintiffs and petitioners have no plain, speedy and adequate remedy in
25 the ordinary course of law, other than the relief sought in this complaint and petition,
26 because the constitutional violations at issue cannot be protected against and
27 plaintiffs' and petitioners' rights cannot be preserved absent injunctive or writ relief.

28 16. Defendants and respondents implementation of the foregoing provisions

1 of Measure B is wrongful conduct, and unless and until enjoined and restrained by
2 order of this court, will cause great and irreparable injury to plaintiffs and petitioners
3 by impairing provision of vested pension rights.

4 17. Plaintiffs and petitioners have no adequate remedy at law for the
5 wrongful implementation of the foregoing provisions of Measure B because it will be
6 difficult to determine the precise measure of damages that will be suffered if
7 defendants' and respondents' conduct is not restrained, and plaintiffs and petitioners
8 will be forced to institute a multiplicity of suits to obtain adequate compensation for
9 each individual's injuries.

10 18. Defendants and respondents have a non-discretionary legal, constitutional
11 and contractual duty to continue in effect all vested Plan provisions, rights and
12 benefits to plaintiffs and petitioners. At all times herein mentioned, defendants and
13 respondents have been able to provide all provisions, rights and benefits under the
14 Plan in effect as of June 4, 2012 to plaintiffs and petitioners.

15 **FIRST CAUSE OF ACTION**
16 **REQUEST FOR DECLARATORY RELIEF**

17 19. Plaintiffs and petitioners hereby incorporate by reference the preceding
18 paragraphs.

19 20. Article I, § 7 of the California Constitution prohibits the taking of property
20 without due process.

21 21. Article I, § 9 of the California Constitution prohibits laws that impair
22 contracts.

23 22. Article I, § 19 of the California Constitution prohibits the taking of private
24 property for public use in the absence of just compensation.

25 23. An actual controversy has arisen and now exists between plaintiffs and
26 petitioners and defendants and respondents relative to their respective rights and
27 duties in that plaintiffs and petitioners contend that Measure B is unconstitutional,
28 invalid and unenforceable, both on its face and as construed by defendants and

1 respondents, because it impermissibly impairs vested contract rights to pension
2 benefits under the Plan. The impairment is neither reasonable nor material to the
3 theory of the pension system and its successful operation. It changes pension plan
4 benefits in a manner which results in a disadvantage to employees and annuitants
5 without comparable new advantages.

6 24. Plaintiffs' and petitioners require a declaration as to the validity of
7 Measure B, both on its face and as applied to plaintiffs' and petitioners' status as plan
8 members. A judicial declaration is necessary and appropriate at this time so that
9 plaintiffs and petitioners may ascertain their rights and duties.

10 25. The City Council prepared and authorized Measure B, and based thereon,
11 plaintiffs and petitioners are informed and believe, and upon such information and
12 belief allege that the defendants and respondents dispute the allegations regarding the
13 invalidity of Measure B, their obligations under law, and the alleged violations of the
14 law.

15 **SECOND CAUSE OF ACTION**
16 **IMPAIRMENT OF CONTRACT**
17 **[CALIFORNIA CONSTITUTION ARTICLE I, § 9]**

18 26. Plaintiffs and petitioners hereby incorporate by reference the preceding
19 paragraphs.

20 27. As set forth in the SJMC, the Plan gives rise to vested contractual rights
21 for employees both active participants and annuitants, prior to June 5, 2012.

22 28. Measure B impairs the contractual rights of plaintiffs and petitioners.

23 29. By impairing these contractual rights without giving plaintiffs and
24 petitioners any comparable advantage, commensurate benefit or compensation,
25 Measure B as applied to existing plan participants, both current San Jose non-safety
26 employees and annuitants, is unconstitutional and violates Article I, § 9 of the
27 California Constitution.
28

**THIRD CAUSE OF ACTION
SUBSTANTIVE DUE PROCESS
[CALIFORNIA CONSTITUTION ARTICLE I, § 7]**

30. Plaintiffs and petitioners hereby incorporate by reference the preceding paragraphs.

31. Article I, § 7 of the California Constitution prohibits the taking of property for a public purpose without due process of law.

32. Plaintiffs and petitioners have vested property right in the benefits provided by the Plan, and in the Plan itself, in place when they began working for the City, as well as any enhancements made during their service with the City.

33. By taking these protected benefits without giving plaintiffs and petitioners any comparable advantage, commensurate benefit or compensation, Measure B violates Article I, § 7 of the California Constitution.

**FOURTH CAUSE OF ACTION
TAKING
[CALIFORNIA CONSTITUTION ARTICLE I, § 19]**

34. Plaintiffs and petitioners hereby incorporate by reference the preceding paragraphs.

35. Article I, § 19 of the California Constitution prohibits the taking of private property for public use in the absence of just compensation.

36. Plaintiffs and petitioners have vested property right in the benefits provided by the Plan, and in the Plan itself, in place when they began working for the City, as well as any enhancements made during their service with the City. In addition, the retirement benefits are a form of promise for compensation.

37. By taking these protected benefits without giving plaintiffs and petitioners any comparable advantage, commensurate benefit or compensation, the provisions of Measure B violates Article I, § 19 of the California Constitution as to the taking of property for a public purpose without just compensation.

**FIFTH CAUSE OF ACTION
PETITION FOR WRIT OF MANDATE,
PROHIBITION OR OTHER APPROPRIATE WRIT RELIEF**

38. Plaintiffs and petitioners hereby incorporate by reference the preceding paragraphs.

39. Plaintiffs and petitioners are informed and believe, and upon such information and belief allege that upon the effective date of Measure B, if not before, defendants and respondents will implement the provisions Measure B and will not abide by all Plan provisions, rights and benefits in effect as of June 4, 2012.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs and petitioners pray for the following relief:

1. A declaration that:

a. The provisions of Measure B cannot be applied to plaintiffs and petitioners because it violates their constitutional and contractual rights; and,

b. The defendants and respondents were and are required to provide plaintiffs and petitioners with the Plan provisions, rights and benefits in place when they began working for the City, as well as any enhancements made during their service with the City.

2. A preliminary and permanent injunction prohibiting the defendants and respondents and the Board from applying or otherwise enforcing any part of Measure B to plaintiffs and petitioners, inclusive of the admonition required under Civil Code, § 52.1;

3. A preemptory writ mandating defendants and respondents and the Board apply all Plan provisions, rights and benefits in effect as of June 4, 2012 to plaintiffs and petitioners and prohibiting the defendants and respondents from applying or otherwise implementing Measure B to plaintiffs and petitioners;

4. Any and all actual, consequential and incidental damages according to proof, including but not limited to damages that have been or made be suffered by plaintiffs and petitioners and all costs incurred by plaintiffs and petitioners in an

1 attempt to enforce the constitutional, statutory and contractual rights and described
2 herein;

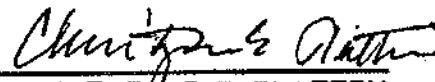
3 5. For attorneys' fees pursuant to California Civil Code § 52.1, Code of Civil
4 Procedure §1021.5, Government Code §800 or otherwise;

5 6. For costs of suit herein incurred; and

6 7. For such costs and further relief as the Court deems just and proper.

7
8 June 14, 2012

9 WYLIE, McBRIDE,
10 PLATTEN & RENNER

11 

12 CHRISTOPHER E. PLATTEN

13 Attorneys for Plaintiffs and Petitioners
14 JOHN MUKHAR, DALE DAPP, JAMES ATKINS,
15 WILLIAM BUFFINGTON and KIRK PENNINGTON

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EXHIBIT S

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10 Attorneys for Plaintiff and Petitioner,
11 AFSCME LOCAL 101

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF SANTA CLARA

14 AMERICAN FEDERATION OF STATE,
15 COUNTY, AND MUNICIPAL EMPLOYEES,
16 LOCAL 101, on behalf of its members,

17 Plaintiff and Petitioner,

18 v.

19 CITY OF SAN JOSE and DEBRA FIGONE in
20 her official capacity as City Manager,

21 Defendants and Respondents,

22 THE BOARD OF ADMINISTRATION FOR
23 THE FEDERATED CITY EMPLOYEES
24 RETIREMENT PLAN,

25 Necessary Party In Interest.

ENDORSED

2012 JUL -5 0 3:21

David J. ...
Deputy Clerk

G. Carrington Adams

Case No. 112CV227864

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDAMUS

1. Unconstitutional Impairment of Contract
(Cal. Const. Art. I § 9 & Civ. Code § 52.1)
2. Unconstitutional Bill of Attainder
(Cal. Const. Art. I § 9 & Civ. Code § 52.1)
3. Unconstitutional Taking of Private Property
(Cal. Const. Art. I § 19 & Civ. Code § 52.1)
4. Unconstitutional Taking of Private Property
Without Due Process
(Cal. Const. art. I § 7 & Civ. Code § 52.1)
5. California Pension Protection Act
(Cal. Const. Art. XVI § 17 & Civ. Code § 52.1)
6. Violation of Constitutional Right to Petition
(Cal. Const. Art. I §§ 2 & 3 & Civ. Code § 52.1)
7. Illegal *Ultra Vires* Tax, Fee or Assessment
(Cal. Const. Art. I, § 7 & Civ. Code § 52.1)
8. Promissory Estoppel and Equitable Estoppel
9. Request for Declaratory Relief
(Code of Civ. Pro. § 1060)
10. Request for Injunctive Relief
(Code of Civ. Pro. §§ 525, 526 & 526(a))
11. Petition for Writ of Mandate
(Code of Civ. Pro. § 1085)

1 Plaintiff American Federation of State, County, and Municipal Employees, Local 101 alleges
2 as follows:

3 I. INTRODUCTION

4 1. Plaintiff and petitioner ("Plaintiff" or "Petitioner") brings this suit for declaratory,
5 injunctive, and writ relief in order to declare unconstitutional under the California Constitution the
6 "Sustainable Retirement Benefits and Compensation Act" ("Act" or "Measure B"), approved by the
7 electorate of the City of San José ("City") on June 5, 2012, and to bar its implementation by
8 defendants and respondents ("Defendants" or "Respondents").

9 2. Plaintiff Local 101 of the American Federation of State, County, and Municipal
10 Employees ("AFSCME" or "Union") is the representative of certain groups of miscellaneous
11 employees employed by the City and who are members of the City's Federated City Employees
12 Retirement Plan (collectively referred to herein as "miscellaneous employees," "employees," or
13 "members").

14 3. Under the California Constitution, public employee pension benefits are deferred
15 compensation, and a public employee has a constitutionally-protected contractual and property right
16 to receive such benefits under the terms and conditions in effect at the time such employee accepts
17 employment.

18 4. A public employee's right to the benefits established under a pension plan vests upon
19 commencing employment, because the right to such benefits represents a forbearance of wages or
20 other compensation otherwise immediately earnable through the employee's ongoing service.

21 5. These rights are vested and cannot be reduced or eliminated without impairing this
22 constitutionally-protected contractual obligation and property right.

23 6. Under California law, a right to retiree health benefits and/or benefits in the form of a
24 post-retirement cost of living adjustments ("COLA") may also vest by implication. The resulting
25 contract and property right to receive these forms of benefits, on terms substantially equivalent to
26 those offered by the public employer, similarly arises upon acceptance or continuation of
27 employment. Once vested, they cannot be reduced or eliminated without impairing this
28 constitutionally-protected contractual obligation.

1 7. In a memorandum dated December 1, 2011, City Mayor Chuck Reed submitted to the
2 City Council a series of recommendations. In relevant part, he recommended that the City Council
3 refrain from declaring a "Fiscal and Service Level Emergency," and further recommended the City
4 Council adopt a resolution calling for a municipal election on June 5, 2012, for the purpose of placing
5 on the ballot an amendment to the City Charter's ("Charter") provisions governing City employee
6 retirement security.

7 8. By memorandum dated February 21, 2012, City Manager Debra Figone proposed to
8 the Mayor and City Council an Act providing for such amendments to the City Charter, authorizing
9 promulgation of ordinances for the purpose of, *inter alia*, reducing City employee retirement security
10 and reducing wages for City employees who "choose" to retain the level of retirement security
11 promised to them (and for which they have contributed a portion of their wages). Attached to the
12 memorandum were the terms of the Act proposed for placement on the ballot.

13 9. The proposal also called for convening a June 5, 2012 special municipal election for
14 the purpose of placing the Act on the ballot for referendum (as amendments to the City Charter must
15 be approved by the City's electorate).

16 10. On March 6, 2012, the City Council adopted the proposal and directed placement of
17 the Act attached thereto on the June 5, 2012 Ballot.

18 11. The Act was subsequently designated "Measure B" on the ballot (hereinafter referred
19 to as "Measure B.")

20 12. On June 5, 2012, the City electorate passed Measure B by referendum.

21 13. On or about July 5, 2012, the City Clerk certified the results of the June 5 election,
22 including passage of Measure B.

23 14. Among other things, Measure B purports to amend the City Charter such that vested
24 employees' pension benefits will be reduced and additional obligations on the part of employees will
25 be incurred with respect to the City's obligation to fund the retirement security it has promised.

26 15. As applied to current employees participating in the Federated City Employees
27 Retirement System, Measure B violates the California Constitution because it substantially impairs
28

1 the affected employees' right to retirement benefits that vested when they commenced employment
2 and/or continued their employment with the City.

3 16. For example, Measure B violates the California Constitution with respect to current
4 employees because it, *inter alia*:

5 a. Reduces and eliminates portions of employee retirement benefits that are or have
6 become vested;

7 b. Imposes conditions subsequent on the right to receive retirement benefits already
8 earned;

9 c. Is an unconstitutional bill of attainder, as it shifts the burden of financing public debt
10 upon a small class of private parties;

11 d. Constitutes an unconstitutional taking of private property for public use without
12 providing the affected employees with just compensation;

13 e. Constitutes an unconstitutional taking of private property for public use without
14 affording the affected employees with substantive due process;

15 f. Is an unconstitutional retroactive law as it subjects employees to liabilities previously
16 incurred by the City, and obligates active employees to fund liabilities previously incurred by the
17 City with respect to its retiree health obligations;

18 g. Is unconstitutional because it violates the "California Pension Protection Act";

19 h. Violates employee-members' constitutional right to petition the courts by imposing a
20 penalty on employee-members who successfully challenge the legality of the Act through a "poison
21 pill" provision; and

22 i. Imposes an illegal and improper tax.

23 17. Additionally, the City should be prohibited from implementing Measure B pursuant to
24 the common law doctrines of promissory estoppel and equitable estoppel.

25 18. Measure B, if implemented, violates the law as summarized above and further detailed
26 in the allegations below.

27 //

28 //

II. VENUE/JURISDICTION

19. Petitioner seeks declaratory relief pursuant to California Code of Civil Procedure section 1060.

20. Petitioner seeks injunctive relief pursuant to Code of Civil Procedure sections 526 and 527 and Civil Code section 52.1.

21. This court has jurisdiction over the writ relief requested in this proceeding under Code of Civil Procedure section 1085.

22. This action is brought under, and seeks to rectify violations of, the laws of the State of California including its Constitution.

23. All parties exist and reside within the County of Santa Clara, and the acts and/or omissions complained of took place within the County of Santa Clara, making this Court the appropriate venue for this action.

III. THE PARTIES

24. Petitioner and Plaintiff AFSCME Local 101 is an unincorporated membership association, and a labor organization as defined by Government Code section 3501.

25. AFSCME Local 101, including its affiliated Municipal Employees' Federation ("MEF") and Confidential Employees' Organization ("CEO"), is the recognized exclusive bargaining representative for certain non-managerial employees of the defendant and respondent City of San José.

26. AFSCME sues on behalf of, and in the interest of, its members employed by the City. Such members are miscellaneous employees and are members of the City's Federated City Employees Retirement System.

27. Measure B purports to affect and substantially impair the rights of AFSCME's members as alleged herein.

28. Defendant and Respondent City of San José is a chartered municipal corporation, and an instrumentality of the State of California, which operates under the authority of the California Constitution and the San José City Charter.

29. Defendant and respondent Debra Figone is sued in her official capacity as City

1 Manager of the City of San José. The City Charter designates the City Manager as the City's chief
2 administrative officer responsible to the City Council for the administration of the City's affairs
3 placed under her charge. Ms. Figone's duties include but are not limited to executing all laws, City
4 Charter provisions, and any acts of the City Council which are subject to enforcement by her
5 subordinates. Executing Measure B is amongst her duties.

6 30. The Board of Administration for the Federated City Employees Retirement System
7 ("Board") is the Necessary Party in Interest in this case and is appointed by the City Council. The
8 Board is responsible for managing, administering, and controlling the Federated City Employees
9 Retirement System and the retirement fund. (California Constitution, art. XVI, sect. 17; San Jose
10 Municipal Code ("SJMC") § 3.28.100.) Action on the part of the Board is required in order to bring
11 the Federated City Employees Retirement System within compliance with Measure B.

12 IV. FACTUAL ALLEGATIONS

13 A. THE FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM

14 31. Prior to Measure B, and at all times relevant hereto, the City Charter provided for a
15 defined benefit pension plan, and set forth a duty on the part of the City to "create[], establish[] and
16 maintain[] ... a retirement plan or plans for all [of its] officers and employees..." (Charter § 1500.)

17 32. The Charter further prescribed the minimum benefits due to its non-excluded
18 miscellaneous employees and required the City Council to provide for pension and other benefits
19 through ordinance. (Charter § 1505.) It also stated that in its discretion, the City Council "may grant
20 greater or additional benefits." (Charter § 1505(e).)

21 33. Pursuant to duly-enacted ordinances, Defendant adopted and established a Federated
22 City Employees Retirement System providing for certain benefits for covered employees. Such
23 ordinances, and other laws of the City and State, further provide for the establishment of a Retirement
24 Board to oversee and administer pension benefits for covered employees.

25 34. The terms and conditions of the plan of benefits prescribed by, and adopted under,
26 these auspices is hereinafter referred to as the "Retirement System," "Federated System,"
27 or "System."
28

1 35. Generally, full-time miscellaneous employees become members of the System upon
2 acceptance of employment with the City.

3 36. Prior to Measure B, the System was funded by contributions from both members and
4 the City under the proportions set forth in the Charter. However, member or employee contributions
5 were never assessed or required with respect to the System's unfunded liabilities; rather members
6 only were responsible for contributing towards the "normal cost"¹ of their annually-earned benefits.

7 37. Therefore, prior to Measure B, the City Charter provided that the funding of benefits
8 under the system was to be computed annually with respect to the normal cost of each employee-
9 member's annual benefit accrual; the Charter and City Ordinances provide that "any [non-excluded]
10 retirement fund, system or plan for or because of current service or current service benefits ..., in
11 relation to and as compared with contributions made by the City for such purpose, shall not exceed
12 the ratio of three (3) for [miscellaneous] employees to eight (8) for the City." (Charter § 1505(c); §
13 SJMC 3.28.710.)

14 38. Under the System, member contributions are made only on account of current service
15 rendered (SJMC § 3.28.710), excepting limited circumstances -- not relevant here -- where employees
16 may make additional contributions to purchase "prior service credit"². (SJMC §§ 3.28.730, 3.28.740.)
17 Again, members are not and have never been required to make contributions into the System to cover
18 their own or others' unfunded liabilities.

19 39. Instead, under the Charter, the City has been responsible for ensuring payment of
20 shortfalls between the plan's assets and the actuarially-determined liability for all benefits owed by
21 the System. Such difference, actuarially determined, represents the System's "unfunded liability,"
22 which fluctuates depending on the System's investment and demographic experience.

23 40. While the City is required to make current service and limited prior service
24 contributions into the retirement system on behalf of members (SJMC §§ 3.28.850, 3.28.890), it is
25 and has been obligated to cover the unfunded liabilities of the retirement system (SJMC § 3.28.880.)
26
27

28 ¹ The normal cost is the actuarially determined cost of new benefits earned each year by active participants.

² Meaning the purchase of pension credit for years of City service that did not qualify for pension membership

1 41. The form of benefit promised by the City and provided under the System to
2 Petitioner's members was a defined benefit consisting of 2.5% of compensation multiplied by the
3 particular employee's years of employment with the City for which the employee is eligible for credit
4 under the System (i.e. "covered" or "credited" service). The defined benefit also included a
5 guaranteed cost of living adjustment, or "COLA," consisting of a 3% annual increase in the pension
6 benefit.

7 42. Although the right to earn and receive such a defined benefit accrues upon accepting
8 and continuing employment under the System, members become eligible to receive such defined
9 benefit on the earlier of reaching age 55 and completing five years of covered service, or completing
10 a full 30 years of service regardless of age. (SJMC 3.28.1110(A).)

11 43. Under the System, members who become disabled and unable to perform their duties
12 are entitled to a disability retirement benefit.

13 44. The City and the System also provide for payment and funding of health benefits for
14 Federated System retirees.

15 45. To qualify for retiree health benefits, a member must retire under the System and have
16 at least fifteen years of service or receive an allowance that is at least 37.5% of final compensation.
17 Furthermore, a retiree may be eligible for benefits if he/she "[w]ould be receiving an allowance equal
18 to at least [37.5%] of [his/her] final compensation [] if the workers' compensation offset ... did not
19 apply." (SJMC 3.28.1950(A)(3).) If a retiree qualifies for the plan, the retirement system pays one
20 hundred percent of the lowest cost plan that is available to active City employees. If a retiree does
21 not choose the lowest cost plan, he/she must pay the difference between that premium and the
22 premium for the lowest cost plan.

23 46. To qualify for retiree dental benefits, a member must retire for disability or service and
24 either have credit for five years of service or more or receive an allowance that is at least 37.5% of
25 final compensation. Furthermore, a retiree is eligible for benefits if he/she "would be receiving an
26 allowance equal to at least [37.5%] of [his/her] final compensation [] if the workers' compensation
27 offset ... did not apply...." If a retiree qualifies for the plan, the retirement fund pays one hundred
28 percent of that members' premiums to an eligible dental plan.

47. The City and the System also provide for a Supplemental Benefit Retiree Benefit Reserve ("SRBR") for the benefit of retired members, survivors of members, and survivors of retired members retired members. If the balance remaining in the Plan's income account [after payment of administrative costs and expenses of the retirement System for the applicable fiscal year] is greater than zero, the [B]oard ... transfer[s] ten percent of the excess earnings to the [SRBR], and [I] transfer[s] the remaining ninety percent of the excess earnings to the general reserve." (SJMC 3.28.340(D).) Furthermore, interest on these funds and excess funds are deposited in the SRBR.

B. MEASURE B

48. Measure B seeks to reduce the retirement security of Petitioner's members while simultaneously shifting obligations and debts already incurred by the City unto a small class of individuals, including Petitioner's members.

49. Measure B further seeks to punish members who either challenge its legality or resist the reduction of the retirement benefit to which they are vested and entitled. Specifically, Section 1514-A of Measure B provides that if any of Measure B's terms are "determined to be illegal, invalid or unenforceable as to Current Employees[.]" current employees' salaries shall be reduced by "an equivalent amount of savings."

Suspension and Reduction of COLA Provision

50. With respect to the COLA component of the System's defined retirement benefit, Measure B authorizes the City Council to eliminate or "suspend" payment of the COLA. By its terms Measure B provides the City Council with discretion to suspend the COLA for a period of five years and thereafter may reduce by half the COLA benefit, or continue the suspension.

51. Prior to Measure B, miscellaneous employees enjoyed a vested right to an annual three percent increase to their pension benefit after retirement. This served the purpose of ensuring that a retiree's pension kept pace with inflation. (SJMC § 3.400.160.) (It should be noted that System members do not participate in the federal Old Age, Survivor and Disability Insurance (OASDI) program administered by the Social Security Administration, which of course includes a COLA component).

1 52. The COLA component of the System's retirement benefit has been funded by
2 employee and City contributions. Specifically, the normal cost of the COLA component is funded by
3 contributions from members and the City on the same three to eight ratio basis as has been applied to
4 the primary pension benefit. (SJMC § 3.44.00.)

5 53. Measure B, however, provides that the City Council is authorized to suspend COLA
6 payments "in whole or in part" until (and if) "[the City Council] determines that the fiscal emergency
7 has eased." (Section 1510-A). Upon information and belief, such provision applies equally to current
8 employees who retire prior to the adoption of any such resolution suspending the COLA.

9 54. Measure B further provides, that "in the event" the City Council "restores all or part of
10 the COLA" it shall not exceed 3% for "current employees" or "1.5% for Current Employees who
11 opted into the VEP" (*Id.*), and it may only be restored prospectively.

12 55. Measure B therefore reduces vested retirement benefits in the form of permitting
13 elimination and reduction of COLA for both current and future retirees.

14 *Elimination of the Supplemental Benefit Retiree Benefit Reserve ("SRBR")*

15 56. Measure B eliminates of the System's Supplemental Benefit Retiree Benefit Reserve
16 ("SRBR").

17 57. Prior to Measure B, in the event the System had a balance in its operating account
18 after payment of administrative costs and expenses of the retirement System for the applicable fiscal
19 year, the Board of Retirement was required to "transfer ten percent of the excess earnings to the
20 [SRBR], and [to] transfer the remaining ninety percent of the excess earnings to the general reserve."
21 (SJMC 3.28.340(D).) Furthermore, interest on funds and excess funds were deposited in the SRBR.

22 58. Funds were held in the SRBR for the benefit of retired members, survivors of
23 members, and survivors of retired members.

24 59. Measure B eliminates the SRBR and transfers the assets held in such account to the
25 System's general fund.

26 *Changes to the Obligation to Fund City Employee Retirement Programs*

27 60. Measure B transfers to employees the responsibility for funding, in part, the System's
28 previously-incurred unfunded liability. Such an obligation has not, heretofore, existed on the part

1 of System members or employees. As set forth above, the Municipal Code and Charter have
2 exclusively placed responsibility on the City for any such incurred liabilities.

3 61. Specifically, in order to retain their vested entitlement to receive their pension
4 benefits, members must personally agree to assume a *pro rata* portion of up to 50% of the City's
5 obligation for the System's unfunded liabilities, in addition to their obligation to make payment of the
6 normal cost of their annual accrued benefits.

7 62. The obligation to assume half of the City's responsibility for financing the System's
8 unfunded liabilities has been computed by the City to equal approximately 16% of gross pay and,
9 accordingly, Measure B caps this obligations 16% of gross pay.

10 63. Employees who decline the obligation to assume the City's debt in this manner, under
11 Measure B, are placed into a "Voluntary Election Plan" or "VEP." Such employees, on a going
12 forward basis, are subject to a dramatic reduction in their vested right to receive their pension benefits
13 and promised level of retirement security.

14 64. Specifically, with respect to employees who decline to assume the City's obligation
15 for the System's unfunded liabilities, the VEP imposes a lower accrual rate for benefits; imposes a
16 later retirement age; increases the years-of-service retirement eligibility gradually each year,
17 indefinitely and with no limit; reduces and caps the annual COLA; redefines the term "final
18 compensation" to exclude the member's compensation that would otherwise have been included in
19 computing the member's pension; and redefines to the member's disadvantage the criteria applied to
20 disability retirements.

21 65. Measure B's VEP does not present members with a "voluntary" option, as the exercise
22 of such choice is neither volitional nor free from coercion or duress.

23 66. Further, although accepting imposition of the VEP may be more advantageous than
24 remaining in the System as amended by Measure B, both "options" require members to accept a
25 reduction in their vested right to receive promised retirement benefits upon retirement.

26 67. Prior to Measure B, the City's miscellaneous employees had the right to retire on the
27 earlier of reaching age fifty-five or working for the City for thirty years. (*See, e.g.,* SJMC §

28 3.28.1110(A).)

1 68. Specifically, a member's annual service retirement "allowance" -- or benefit -- was
2 computed with respect to his/her final compensation, which was defined as the "highest average
3 annual compensation earnable by the member during any period of twelve consecutive months of
4 federated city service...." (SJMC § 3.28.030.11.) Such a full service retirement benefit was
5 computed as 2.5% of such final compensation per year of service. Furthermore, one year of service
6 was defined as "1,739 or more hours of federated city service rendered by the member in any
7 calendar year." (SJMC § 3.28.6809(B).)

8 69. Employees who are unable to shoulder the City's obligation for the System's
9 unfunded liabilities must accept, under the VEP, a reduced benefit accrual rate of two percent of final
10 compensation; an increased retirement age of sixty-two; an ever-increasing years-of-service
11 retirement (which increases by six months each year, starting in July of 2017); a reduced COLA of
12 1.5%; "final compensation" redefined as "the average annual pensionable pay of the highest *three*
13 *consecutive years* of service"; and an increase in the definition of a year of service to 2,080 hours.
14 (Section 1507-A (emphasis added).)

15 *Changes to the System's Disability Retirement Benefit*

16 70. Measure B redefines the term "disability" with respect to current employees in a
17 manner that reduces such employees' eligibility for a disability retirement under the System. It
18 further reduces the right to a disability retirement benefit for employees required to enroll into the
19 VEP.

20 71. Specifically, Measure B reduces the maximum benefit that a disabled retiree may
21 receive, reduces the categories of compensation for purposes of computing the benefit; and reduces
22 the annual COLA.

23 72. Prior to Measure B, a miscellaneous employee qualified for a "disability retirement" if
24 his/her "disability ... render[ed] the member physically or mentally incapable of continuing to
25 satisfactorily assume the responsibilities and perform the duties and functions of the position then
26 held by him and of any other position in the same classification of positions to which the city may
27 offer to transfer him, as determined by the retirement board on the basis of competent medical
28 opinion." (SJMC § 3.28.1210.) Prior to Measure B, disabled employees who could fill such

1 positions were nevertheless entitled to a disability retirement if no such position existed or was open.

2 73. Further, members who retire because of a service-connected disability were, prior to
3 Measure B, permitted an "annual allowance" of no less than forty percent of their compensation plus
4 2.5% for each year of service beyond sixteen, to a maximum of seventy-five percent of the member's
5 final compensation. (SJMC § 3.28.1280.)

6 74. With respect to non-service connected disabilities, miscellaneous employees who
7 became members of the System prior to September 1, 1998, were eligible for a non-service connected
8 disability retirement allowance equal to the normal retirement allowance less half a percent for each
9 year the member is younger than age fifty-five. All other members receive an allowance of twenty
10 percent of final compensation plus two percent of final compensation for each year of service in
11 excess of six years, but less than sixteen years, plus 2.5% of final compensation for each year of
12 service credit in excess of sixteen years, up to seventy-five percent of the member's final
13 compensation. (SJMC § 3.28.1300.)

14 75. Prior to Measure B, disability retirees received an annual three percent COLA. (SJMC
15 §§ 3.44.010, 3.44.160.)

16 76. Measure B substantially impairs both the eligibility to receive and the substantive
17 benefits provided under the System's disability retirement provisions.

18 77. Specifically, Measure B redefines the term "Disability" for purposes of restricting
19 eligibility to receive a disability retirement. Measure B narrows the definition to apply only to
20 employees whose disability "has lasted or is expected to last for at least one year or to result in death"
21 and "cannot perform any other jobs described in the City's classification plan because of his or her
22 medical condition(s)... regardless of whether there are other positions available at the time a
23 determination is made." (Section 1509-A (emphasis added).)

24 78. Thus, under Measure B, a member who suffers debilitating injury may be denied a
25 disability benefit if she can theoretically perform the functions of any classification, even if there is
26 no vacancy available to accommodate such employee.

27 79. Measure B also reduces the disability benefit provided under the System.

28 Specifically, service-connected disability retirees receive fifty percent "of the average annual

1 pensionable pay of the highest three consecutive years of service." Further, employees become
2 eligible for non-service connected disability retirement benefits after five years of service with the
3 City, computed at two percent times final compensation, defined as the average highest three
4 consecutive years. Such an employee may receive a minimum and maximum non-service connected
5 disability retirement of twenty percent and fifty percent, respectively. (Section 1507-A(e).)

6 80. Under Measure B the disability retirement COLA is reduced to 1.5%.

7 81. Furthermore, Measure B shifts the responsibility for determining eligibility for
8 disability retirement benefits from the Board to "an independent panel of medical experts" subject to
9 a "right of appeal to an administrative judge."

10 Funding of the City's Retiree Health Obligations

11 82. Pursuant to the SJMC, members of the Federated System who satisfy certain
12 conditions related to service or disability retirement are entitled to receive retiree medical and dental
13 benefits. (SJMC §§ 3.28.1950, 3.28.2000.)

14 83. Members of the System enjoy a right to retiree healthcare benefits that is vested by
15 explicit or implied contract. Indeed, employees contribute to the cost of retiree health through their
16 own payroll deductions.

17 84. Retiree healthcare benefits are a form of deferred compensation for present service.

18 85. Retiree healthcare benefits are also provided as a result of written agreements between
19 the City and labor organizations, including Petitioner.

20 86. Prior to Measure B, AFSCME members have contributed to their retiree health
21 insurance on a one-to-one basis with the City.

22 87. Prior to Measure B the City has not, and did not, make contributions at a level
23 sufficient to fully prefund its retiree health obligations. Rather, the City paid for its retiree health
24 obligations through a "pay-as-you-go" method, utilizing both its own and employee contributions
25 towards providing health benefits to its retirees. Where such amounts were insufficient to pay the
26 city's health obligations, the City was responsible for such unfunded amounts.

27 88. Although active employees contributed in the form of payroll deductions towards the
28

1 costs of retiree healthcare, they were not responsible for funding the full cost of the Retiree
2 Healthcare Plan's ("RHC Plan") unfunded liabilities.

3 89. On information and belief, the City has developed an Annual Retirement Cost or
4 "ARC" that incorporates the City's predicted normal cost of retiree health obligations and the cost of
5 promised but unfunded benefits to current and future retirees (*i.e.* unfunded liabilities).

6 90. Beginning in or around 2009, the City imposed increasingly significant layoffs of its
7 employees and further reduced wages of those that remained by as much as twelve percent of
8 pensionable pay. As a result, the City's pay-as-you go method of funding its retiree health
9 obligations became untenable as the amount of employee contributions to the ARC necessarily
10 declined due to such layoffs and pay reductions. The City's actions further increased the pool of
11 retirees and consequently its retiree health obligations, as employees opted to retire rather than be
12 placed on lay-off or continue to work under significant pay reductions.

13 91. Measure B attempts to shift the City's obligation associated with previously-incurred
14 and promised retiree health benefits onto its current employees. Measure B seeks to make current
15 employees responsible not only for 50% of the normal cost of their annually-incurred retiree health
16 obligations, but also for the City's unfunded liabilities with respect to all of its retiree healthcare
17 obligations. (Measure B, § 1512-A(a) (making active employees responsible for contributing "a
18 *minimum* of [fifty percent] of the cost of retiree healthcare, including both normal cost and unfunded
19 liabilities").)

20 92. Upon information and belief, with respect to members of the Petitioner, such an
21 obligation imposes an excise on current employee compensation for the payment of the City's
22 general obligations.

23 93. Such excise is substantially greater than the amount of benefits each such employee is
24 expected to receive under the RHC Plan. As a result, such employees are paying for benefits
25 unassociated with their City service.

26 94. Measure B further attempts to set a framework to severely diminish the value of the
27 "low cost plan" to which members are entitled upon retirement .
28

1 95. Measure B also purports to “unvest” the right to retiree health notwithstanding the fact
2 that employee members of petitioner have directly contributed through payroll deduction to the cost
3 of such benefits. (Measure B, Section 1512-A(b) (stating “[n]o retiree healthcare plan or benefit shall
4 grant any vested right...”; providing City with right to “amend, change or terminate any [RHC P]lan
5 provision”).) Such provision, as alleged below, is an unconstitutional taking and impairment of
6 contract, and violates due process, as guaranteed by the California Constitution.

7 96. Measure B also redefines the benefit provided under the RHP as “the medical plan
8 which has the lowest monthly premium available to any active employee in either the Police and Fire
9 Department Retirement Plan or [the System].” (Section 1512-A(c).) This effectively fixes employee
10 benefits to the lowest cost plan City-wide, whether or not that plan was bargained for or imposed
11 upon a union other than AFSCME by the City.

12 97. As a result, Measure B reduces the expectations of Petitioner’s members by reducing
13 the amount of Retiree health premium payment available to them upon retirement.

14 *Retroactive Shifting of Public Debt to a Small Class of Individuals*

15 98. Measure B shifts a substantial burden onto current employees for the financing of the
16 System’s, Plan’s, and the RHC Plan’s unfunded liabilities.

17 99. Such unfunded liabilities represent the previously-incurred obligations of the City with
18 respect to benefits earned by current and future retirees of the City.

19 100. With respect to the System, under Measure B, employees who refuse to forego their
20 vested right to their pension benefit must make “additional retirement contributions in increments of
21 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to
22 amortize any pension unfunded liabilities....” (Section 1506-A(b).)

23 101. Prior to Measure B, the City was and has been obligated to pay for any such unfunded
24 liabilities. Further, until the VEP is implemented, Section 1506-A of Measure B governs all
25 members of the System, obligating them to shoulder the City’s debts related to the System’s
26 unfunded liabilities.

27 102. Similarly, if a court finds Section 1506-A(b) of Measure B to be “illegal, invalid or
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unenforceable" then the City is purportedly empowered to require employees to pay down the City's obligations for the System's unfunded liabilities. (Section 1514-A of Measure B.)

103. Measure B places on current employees the responsibility of funding the cost of their benefits in addition to the unfunded liabilities not associated with their own service, including the already-accrued retiree health benefits obligations and the benefits payable to current retirees.

104. Measure B requires a small class of individuals, namely current employees with respect to the RHC Plan and current employees who refuse to forego their vested benefits under the System's VEP plan, to retroactively fund liabilities of the public.

105. Measure B improperly imposes on members an obligation to fund a portion of the City's general obligations.

106. Measure B imposes severe retroactive liability on a limited class of parties that could not have anticipated such liability, and in a substantially disproportionate manner.

107. Under the California constitution such retroactive legislation deprives individuals of legitimate expectations and upsets settled transactions.

108. Retroactive lawmaking is of particular constitutional concern because of its use, as with Measure B, is a means of retribution against unpopular groups.

109. Measure B is further an improper imposition of public debt on a small group of individuals.

110. In that regard, Measure B is an unlawful retroactive law that violates the California Constitution's takings and due process clauses, and such Constitution's prohibition of *ex post facto* laws and bills of attainder.

VIII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Unconstitutional Impairment of Contract (Cal. Const. Art. I § 9 and Cal. Civ. Code § 52.1³)

111. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

³ Plaintiff may sue in Superior Court for a violation of its members' constitutional rights pursuant to Civil Code Sect. 52.1.

1 112. California's Constitution, Article I, section 9, prohibits the state and its
2 instrumentalities, including the City, from passing a law that impairs the obligation of contracts
3 ("Contracts Clause").

4 113. Modifications to public employee retirement plans affecting current employees must
5 be reasonable under California's Contracts Clause. Changes can be reasonable only if (1) they bear
6 some material relation to the theory of a pension system and its successful operation and (2) changes
7 in a pension plan that result in a disadvantage to employee are accompanied by comparable new
8 advantages.

9 114. Miscellaneous employees enjoy vested contractual rights to the System, Plan, their
10 retirement benefits, and any enhancements implemented once they begin working with the City.

11 115. Measure B substantially impairs these rights without providing a comparable
12 advantage.

13 116. Under California law, these principles apply to changes in the method of funding of
14 pension systems, and such changes cannot be imposed on members to their disadvantage, when there
15 is no corresponding advantage.

16 117. Measure B, and the funding mechanisms providing for reduction in wages and shifting
17 of liabilities to a small class of individuals who derive no benefits from such liabilities, is contrary to
18 the theory of a pension system.

19 118. Measure B interferes and impairs those contractual rights in a way that is
20 unreasonable.

21 119. Measure B's provisions bear no material relation to the theory of a retirement system
22 or its successful operation; they simply allow the City to escape from its obligation to provide its
23 employees with these form of deferred compensation with which it previously enticed them into its
24 employ.

25 120. Measure B's provisions harm the effected employees without providing them with any
26 comparable advantage, commensurate benefit, or compensation.

27 121. Therefore, Measure B violates Article I, Sect. 9 of the California Constitution as it
28 applies to existing plan participants and is unconstitutional.

SECOND CAUSE OF ACTION
Unconstitutional Bill of Attainder
(Cal. Const. Art. I § 9 and Cal. Civ. Code § 52.1)

122. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

123. California's Constitution, Article I, section 9 prohibits the state and its instrumentalities, including the City, from passing bills of attainder.

124. Measure B is a legislative act. It was initially promulgated and put to a vote of the electorate by the City Council, and it was then approved by the City's electorate.

125. Measure B exclusively targets and penalizes current and future City employees ("public employees") for harsher treatment than other residents of the City.

126. Measure B penalizes current City employees by imposing an excise on them, unless such employees agree to forego their Constitutionally-protected rights to receive their full Pension benefit.

127. Such excise, consisting of up to 16% of their salary, is a severe penalty, and constitutes punishment.

128. Such excise inflicts punishment on this small class of individuals by subjecting them to adverse economic treatment. Measure B further punishes such employees by imposing on them a "poison pill" provision whereby if they seek to enforce their Constitutionally-protected right to be free from Bills of Attainder and other unconstitutional treatment, they are further penalized.

129. Measure B is therefore is an unlawful Bill of Attainder.

THIRD CAUSE OF ACTION
Unconstitutional Taking of Private Property
(Cal. Const. Art. I § 19 and Cal. Civ. Code § 52.1)

130. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

131. A public entity may not take private property for public use in the absence of just compensation. (Cal. Const. art I § 19.) Nor may a public entity pass regulations having the effect of depriving individuals of their property.

1 132. Miscellaneous employees enjoy vested contractual and property rights under the
2 System, once they begin work for the City.

3 133. Measure B is a taking of such rights.

4 134. Similarly, retirement benefits promised in order to induce employment with the City
5 are a form of deferred compensation. Measure B constitutes a taking of such property.

6 135. Measure B has a drastic fiscal impact on public employees because it significantly
7 abridges their vested right to receive certain retirement benefits.

8 136. Furthermore, Measure B constitutes an unconstitutional taking because it divests
9 public employees' salaries to finance the System's unfunded liabilities and employee retirement
10 plans, without providing such employees with just compensation for this divestiture.

11 137. Measure B seizes a greater portion of their salaries to finance the City's unfunded
12 liabilities related to pension and retiree health benefits. In other words, because Measure B seizes
13 wages in order to pay for the previously-incurred retiree health and Pension obligations associated
14 with others, it constitutes an unconstitutional taking.

15 138. Although Measure B significantly infringes upon the vested property rights of plaintiff
16 and those it represents, it does not provide them with any form of comparative advantage. Therefore,
17 it amounts to an unconstitutional taking of private property for a public purpose without just
18 compensation.

19 139. Measure B further constitutes an unlawful retroactive law in violation of the California
20 Constitution's takings clause.

21 **FOURTH CAUSE OF ACTION**
22 **Unconstitutional Taking of**
23 **Private Property Without Due Process**
 (Cal. Const. art. I § 7 and Cal. Civ. Code § 52.1)

24 140. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth
25 fully herein.

26 141. California's Constitution, Article I, section 7, provides "A person may not be
27 deprived of ... property without due process of law."

28 142. Miscellaneous employees enjoy vested contractual and property rights to the pension

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1 benefits set forth under the System, and any enhancements made during their term of employment
2 with the City. This includes the right to a COLA and retiree healthcare benefits.

3 143. Measure B violates the members' rights to substantive due process guaranteed by the
4 California constitution by taking their vested property rights without affording them a comparable
5 advantage or commensurate benefit or compensation.

6 144. Measure B further constitutes an unlawful retroactive law in violation of the California
7 Constitution's Due Process clause.

8 **FIFTH CAUSE OF ACTION**
9 **Violation of California's Pension Protection Act**
(Cal. Const. art. XVI § 17 and Cal. Civ. Code § 52.1)

10 145. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth
11 fully herein.

12 146. The California Constitution gives public sector pension or retirement systems the "sole
13 and exclusive fiduciary responsibility" over the system's assets and its administration. (Cal. Const.
14 art. XVI §§ 17, 17(a).) It also holds that system assets are "trust funds and shall be held for the
15 exclusive purposes of providing benefits to participants in the pension or retirement system and their
16 beneficiaries..." (Cal. Const. art. XVI § 17(a).)

17 147. The California Constitution states that "the retirement board of a public pension or
18 retirement system shall have plenary authority and fiduciary responsibility for investment of moneys
19 and administration of the system..." subject to specified conditions. (Cal. Const. art XVI § 17.)

20 148. It further provides that the Board "shall have the sole and exclusive fiduciary
21 responsibility over the assets of the public pension or retirement system[.]" and "it shall also have the
22 sole and exclusive responsibility to administer the [S]ystem in a manner that will assure prompt
23 delivery of benefits and related services to the participants and their beneficiaries." Furthermore, the
24 "assets of [the System] are trust funds and shall be held for the exclusive purposes of providing
25 benefits to participants in the [System] and their beneficiaries and defraying reasonable expenses of
26 administering the [S]ystem." (Cal. Const. art XVI § 17(a).)

27 149. A Retirement Board's "duty to its participants and their beneficiaries shall take
28

1 precedence over any other duty." (Cal. Const. art XVI § 17(b).) Further, the Board's "exclusive
2 fiduciary responsibilit[y] ... to provide for actuarial services in order to assure the competency of the
3 assets of the" System. (Cal. Const. art XVI § 17(e). *See also* SJMC § 3.28.350(B).)

4 150. The City's Municipal Code grants real party in interest, the Retirement Board,
5 exclusive control over investing and administering of the retirement fund. (SJMC § 3.28.310.)

6 151. The Code charges the Board with investing and reinvesting fund assets, which are
7 "held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries
8 and defraying reasonable expenses of administering the plan." (SJMC § 3.28.350(A).)

9 152. Amongst its other responsibilities, the Board also determines employee eligibility for
10 receipt of retirement benefits, the calculation of employer and member contributions, and the
11 distribution of benefits to retirees.

12 153. The California Constitution also requires that the "members of the retirement board of
13 a public pension or retirement system shall discharge their duties with respect to the system solely in
14 the interest of, and for the exclusive purposes of providing benefits to, participants and their
15 beneficiaries, minimizing employer contributions thereto, and defraying reasonable administrative
16 expenses of administering the system." (Cal. Const. art. XVI § 17(a).) Also, a retirement board's
17 duty to its participants and their beneficiaries shall take precedence over any other duty." (Cal. Const.
18 art. XVI § 17(b).)

19 154. Measure B requires that when the Necessary Party in Interest adopts retirement plans
20 under the Federated System, it "minimize any risk to the City and its residents...." (Section 1513-
21 A(a).) Requiring that Necessary Party in Interest consider the risk of such a plan to any other party
22 besides its participants and beneficiaries directly contradicts its primary fiduciary responsibility to
23 Plan participants and beneficiaries.

24 155. Measure B requires that all "plans adopted pursuant to the Act ... minimize any risk to
25 the City and its residents" (Section 1513-A(a).) Again, this command contravenes the Board's
26 primary fiduciary duty to Plan participants and beneficiaries.

27 156. Section 1513-A of Measure B sets forth certain actuarial requirements that usurp the
28 Board's plenary power and exclusive fiduciary responsibility, as mandated by California's

1 Constitution, to provide for actuarial services to ensure the competency of the assets" of the System.

2 157. For these reasons Measure B is in conflict with and preempted by the California
3 Constitution.

4 SIXTH CAUSE OF ACTION

5 Violation of Constitutional Right to Petition (Cal. Const. art. I §§ 2, 3 and Cal. Civ. Code § 52.1)

6 158. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth
7 fully herein.

8 159. Miscellaneous employees enjoy vested contractual rights to the Plan, its benefits, and
9 any enhancements once they begin working with the City. This includes the right to pension
10 payments with a COLA and retiree healthcare benefits.

11 160. "The people have the right to ... petition government for redress of grievances...."
12 (Cal. Const. art. I § 3.)

13 161. Section 1514-A of Measure B holds that if Section 1506-A(b) "is determined to
14 illegal, invalid or unenforceable to Current Employees[.]" current employees' salaries shall be
15 reduced by "an equivalent amount of savings." The penalty Section 1514-A imposes for a successful
16 challenge to Section 1506-A(b) is equally detrimental to members as the burden imposed upon them
17 by Section 1506-A(b) itself.

18 162. The penalty imposed by Measure B for successfully mounting a legal challenge to
19 Measure B is unrelated to the theory of a pension system and violates the Constitutionally protected
20 right to petition.

21 163. Measure B impermissibly imposes a cost or risk upon the exercise of the right to
22 petition the courts for redress, and its purpose and effect is to chill the assertion of constitutional
23 rights by penalizing those who choose to exercise them.

24 164. Section 1514-A of Measure B deters members from challenging Measure B by
25 imposing an unreasonable, burdensome, legally unauthorized, and unrelated penalty for successfully
26 invoking the Constitutional right to petition the courts.

27 165. Measure B discourages the exercise of a fundamental right and therefore violates Cal.
28 Constitution Article I, Sections 2 and 3.

SEVENTH CAUSE OF ACTION
Illegal *Ultra Vires* Tax, Fee or Assessment
(Cal. Const. Art. I, § 7 & Civ. Code § 52.1)

166. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

167. Measure B imposes on current and future employees the obligation to Fund the city's general obligation for the unfunded liabilities associated with its pension System and Retiree Healthcare Plan.

168. Measure B accomplishes this by imposing an excise on City employee wages.

169. Rather than impose upon employees the cost of their own, incurred benefits, Measure B imposes on employees an excise to raise funds for the payment and funding of general obligations of the City, namely the already-incurred liabilities of future retirees and the benefits provided to current retirees.

170. Under California law, permissible fees must be related to the overall cost of the governmental regulation. A fee, excise or tax may not exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate general revenue becomes a tax.

171. The excises imposed by Measure B are excessive as they are not related to the cost of the individual employees' benefits but also subsidize the City's own, previously incurred, obligations.

172. The excises further offend principles of equal protection under the California Constitution.

173. Statutes imposing fees, excises or taxes violate the California Constitution's equal protection clause if they select one particular class of persons for a species of taxation without rational basis.

174. Measure B violates the California Constitution's equal protection provision to the extent it imposes liability upon one person for the support of another not obligated to support such person. Thus, there is no rational basis for levying the excise exclusively upon members.

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**EIGHTH CAUSE OF ACTION
Promissory Estoppel and Equitable Estoppel**

175. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

176. Promissory estoppel serves as consideration in order to enforce a bargained-for agreement. That is, the reliance on a promise made by one party serves as a basis to enforce such promise in law or equity.

177. Estoppel applies to claims against the government, particularly where the application of the doctrine would further public policies and prevent injustice.

178. The City, through its Municipal Code, Charter and communications with employees and their labor organizations represented that employees were not liable to finance public debt, or the System's or RHC Plan's unfunded liabilities.

179. The City further represented that employees would earn benefits and have the right to receive a certain level of benefits. In reliance thereon, such members and employees accepted and continued in employment, and made payroll contributions of their own into the System and RHC Plan.

180. The City should have reasonably expected these promises to encourage the miscellaneous employees to accept employment with it and continue working for it until they qualified for service retirement.

181. The City violated these promises when it adopted Measure B by reducing benefits and shifted the burden of financing its unfunded liabilities upon miscellaneous employees.

**NINTH CAUSE OF ACTION
REQUEST FOR DECLARTORY RELIEF
(Code of Civ. Pro. § 1060)**

182. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

183. Measure B requires that the City Council adopt ordinances to "implement and effectuate [its] provisions...." Unless relief is granted, Measure B becomes effective immediately and sets as a goal that "such ordinances shall become effective no later than September 30, 2012."

184. An actual controversy has arisen and now exists between Plaintiff and Defendants as to Defendants' duties with respect to implementation of Measure B.

185. Plaintiff contends that Measure B violates the "Contracts Clause" and prohibition on "Bills of Attainder" (Cal. Const. art. I § 9), "Taking Clause" (Cal. Const. art. I § 19), "Due Process Clause" (Cal. Const. art. I § 7), "Pension Protection Act" (Cal. Const. Art. XVI § 17), prohibition on unlawful excises (Cal. Const. art. I § 7), and right to petition the courts (Cal. Const. art. I §§ 1, 2) pursuant to the state Constitution.

186. Plaintiff is informed and believes that the City disputes the allegations contained within this Complaint and Petition and contends that it has a legal duty to implement Measure B as a result of its adoption by the voters of Defendant City.

187. Plaintiff desires a judicial determination of their rights and a declaration of whether Measure B violates the aforementioned sections of the California Constitution, the City Charter, SJMC, and/or provisions of the Plan.

188. A judicial determination is necessary and proper at this time under these circumstances in order to determine the duties and obligations of the parties with respect to Measure B.

TENTH CAUSE OF ACTION
REQUEST FOR INJUNCTIVE RELIEF
 (Code of Civ. Pro. §§ 525, 526, and 526(a))

189. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

190. Plaintiff and groups, residents, registered voters, and taxpayers of the City will suffer irreparable harm as a result of the City's expenditure of staff time and taxpayer funds in connection with implementation of Measure B.

191. Furthermore, members represented by AFSCME will suffer irreparable harm from the constitutional violations at issue.

192. Plaintiff can demonstrate a high-likelihood of success on the merits of its claim that Measure B violates the aforementioned provisions of the California Constitution, the City Charter, Municipal Code, and agreements between the parties.

1 193. Plaintiff has no plain, speedy, or adequate remedy at law.

2 194. Plaintiff's members will suffer irreparable harm in the event the City is not enjoined
3 from implementing Measure B.

4 195. The injunctive relief Plaintiff seeks is prohibitory in nature, and it seeks to restrain
5 and/or prohibit Defendant City from taking any steps to implement, enforce, or otherwise give effect
6 to Measure B.

7 **ELEVENTH CAUSE OF ACTION**
8 **PETITION FOR WRIT OF MANDATE**
(Code of Civ. Pro. § 1085)

9 196. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth
10 fully herein.

11 197. Respondent City, and those public officers and employees acting by and through its
12 authority — including Necessary Party in Interest — have a clear, present, and ministerial duty to
13 implement only those ordinances and regulations that are not in conflict with the California
14 Constitution. Respondent City has failed to perform its duty to comply with those requirements to
15 the extent it intends to implement the provisions of Measure B.

16 198. Measure B violates Const. art. 1, sects. 1, 2, 7, 9, 19; Const. art. XVI, sect. 17 of the
17 California Constitution; the City Charter; the SJMC; and the terms of the Plan.

18 199. Petitioner is beneficially interested in a peremptory writ of mandate to compel
19 Respondent City, and those public officers and employees acting by and through its authority, to
20 perform their duties imposed by law, including refraining from implementing the provisions of
21 Measure B.

22 200. Plaintiff has no plain, speedy or adequate remedy at law.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff-Petitioner prays for the following relief:

25 1. A declaration that Measure B cannot be applied to the AFSCME members working for the
26 City on or before June 5, 2012;

27 2. A declaration ordering defendants and respondents to not apply the terms of Measure B
28

1 against petitioner-plaintiff's members currently in the City's employ, and restoring to such employees
2 all rights and benefits purportedly abridged by Measure B.

3 3. A permanent injunction prohibiting the defendants and petitioners from applying or
4 otherwise enforcing any part of Measure B against members working for the City before June 5,
5 2012;

6 4. A peremptory writ mandating defendants and respondents and the Board to apply all Plan
7 provisions, rights and benefits in effect before June 5, 2012, to AFSCME members and prohibiting
8 the application or implementation of Measure B to them;

9 5. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5,
10 Government Code Section 800, or otherwise;

11 6. For costs of suit herein incurred; and,

12 7. For such costs and further relief as the Court deems just and proper.

13
14 Dated: July 5, 2012

BEESON, TAYER & BODINE, APC

15
16 By: 

TEAGUE P. PATERSON
VISHTASP M. SOROUSHIAN
Attorneys for Plaintiff and Petitioner
AFSCME LOCAL 101

EXHIBIT T

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and address): Arthur A. Hartinger (SBN: 121521), Jennifer L. Nock (SBN: 160663) Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, California 94607 TELEPHONE NO.: (510) 808-2000 FAX NO. (Optional): (510) 444-1108 E-MAIL ADDRESS (Optional): ahartinger@meyersnave.com ATTORNEY FOR (Name): Defendant and Respondent City of San Jose		ENDORSED CM-015 FOR COUNTY USE ONLY FILED 2012 JUL -6 P 3:57 David H. Yanez, Clerk of the Superior Court County of Santa Clara, California By: <i>T. Mai</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court (DCT)		
PLAINTIFF/PETITIONER: San Jose Police Officers' Association DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret Pln		CASE NUMBER: 112CV225926 JUDICIAL OFFICER: Hon. Patricia M. Lucas DEPT.: 2
NOTICE OF RELATED CASE		

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: City of San Jose v. San Jose Police Officers' Association, et al.
 b. Case number: 5:12 CV 02904 LHK PSG
 c. Court: ☐ same as above
☒ other state or federal court (name and address): U.S. District Court, N.D. Cal., 280 S. 1st St., SJ, CA
 d. Department: San Jose Division, Hon. Lucy Koh, Courtroom 8
 e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
 f. Filing date: June 5, 2012
 g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No
 h. Relationship of this case to the case referenced above (check all that apply):
☒ Involves the same parties and is based on the same or similar claims.
☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
☐ Involves claims against, title to, possession of, or damages to the same property.
☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
☒ Additional explanation is attached in attachment 1h
 i. Status of case:
☒ pending
☐ dismissed ☐ with ☐ without prejudice
☐ disposed of by judgment
2. a. Title: Robert Saplen, et al. v. City of San Jose, et al.
 b. Case number: 112CV225928
 c. Court: ☒ same as above
☐ other state or federal court (name and address):
 d. Department: Dept. 8, Hon. Peter Kirwan

BY FAX

PLAINTIFF/PETITIONER: San Jose Police Officers' Association	CASE NUMBER:
DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret P	112CV225926

2. (continued)

- e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
- f. Filing date: June 6, 2012
- g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No
- h. Relationship of this case to the case referenced above (check all that apply):
- ☐ involves the same parties and is based on the same or similar claims.
- ☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☒ Additional explanation is attached in attachment 2h
- i. Status of case:
- ☒ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

3. a. Title: Teresa Harris, et al. v. City of San Jose, et al.

b. Case number: 112CV226570

c. Court: ☒ same as above☐ other state or federal court (name and address):

d. Department: Dept. 9; Hon. Mark H. Pierce

e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):

f. Filing date: June 15, 2012

g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No

h. Relationship of this case to the case referenced above (check all that apply):

- ☐ involves the same parties and is based on the same or similar claims.
- ☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☒ Additional explanation is attached in attachment 3h

i. Status of case:

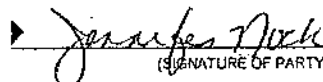
- ☒ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

4. ☒ Additional related cases are described in Attachment 4. Number of pages attached: 1

Date: July 6, 2012

Jennifer L. Nock, Attorney for City of San Jose

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)



(SIGNATURE OF PARTY OR ATTORNEY)

Attachments 4 and 1h-4h to Notice of Related Case Form CM-015

San Jose Police Officers' Association v. City of San Jose et al.
Case No. 112CV225926

Attachment 4

a Title: *John Mukhar, et al. v. City of San Jose, et al.*
b Case Number: 112CV226574
c Court: Same as above
d Department: Dept. 8, Hon. Peter Kirwan
e Case Type: Unlimited civil
f Filing Date: June 15, 2012
g Complex Case Status: No – case has not been designated complex.
h Relationship of This Case to the Case Referenced Above:
X Arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
X Is likely for other reasons to require substantial duplication of judicial resources if heard by different judges. Additional explanation is attached in attachment 4h.
i Status of Case: Pending

Attachment 1h-4h

Four related state-court actions are currently pending before different judges in this Court regarding the validity of Measure B, a pension-reform measure recently enacted by voters of the City of San Jose ("City"). These actions are also related to a federal action for declaratory relief filed by the City that is currently pending before the Honorable Lucy Koh in the United States District Court for the Northern District of California.

The City's action is the first-filed of all five actions. It is also the most comprehensive, encompassing all the claims and parties, or parties in privity thereto, of the four actions pending in this Court. Specifically, all five actions contain overlapping claims seeking declaratory relief regarding the validity (or invalidity) of Measure B under the contracts, takings, and due process clauses of the California Constitution. The City's federal action and the San Jose Police Officers' Association's state court action also seek declaratory relief regarding Measure B's validity (or invalidity) under the free speech, right to petition, separation of powers provisions under the California Constitution, the Pension Protection Act, the Meyers Milias Brown Act, and regarding whether Measure B breaches any contracts.

Requiring these identical and overlapping issue to be heard by different judges would result in substantial duplication of state and federal judicial resources.

In light of the above, and given that only the City's federal action seeks adjudication of federal claims, the single federal action is the most efficient forum for fully adjudicating the validity of Measure B. Accordingly, the City will shortly be filing a motion in Department 2 to consolidate and stay the four state court actions so that the parties may litigate the validity of Measure B in a single federal court action, before a single judge.

PLAINTIFF/PETITIONER: San José Police Officers' Association	CASE NUMBER:
DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret B	112CV225926

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):

555 12th Street, Suite 1500
Oakland, California 94607

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (check one):

- a. ☐ deposited the sealed envelope with the United States Postal Service.
b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:

- a. on (date): July 6, 2012
b. from (city and state): Oakland, California

4. The envelope was addressed and mailed as follows:

- e. Name of person served:

John McBride, Chris Platten, Mark Renner
Street address: 2125 Canoas Garden Ave, 120
City: San Jose
State and zip code: CA 95125

- c. Name of person served:

Street address:
City:
State and zip code:

- b. Name of person served:

Gregg Adam, Jonathan Yank, G. Martinez
Street address: 44 Montgomery St., Ste 400
City: San Francisco
State and zip code: CA 94104

- d. Name of person served:

Street address:
City:
State and zip code:

☐ Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 6, 2012

Julie Hokanson

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

EXHIBIT U

(ENDORSED)
FILED

JUL 10 2012

David H. Yanesaki, Clerk of the Superior Court
County of Santa Clara, California

By P. Jauregui Deputy Clerk

1 Arthur A. Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Linda M. Ross (SBN: 133874)
lross@meyersnave.com
3 Jennifer L. Nock (SBN: 160663)
jnock@meyersnave.com
4 Michael C. Hughes (SBN: 215694)
mhughes@meyersnave.com
5 MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
6 Oakland, California 94607
Telephone: (510) 808-2000
7 Facsimile: (510) 444-1108

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

8 Attorneys for Defendants and Respondents
City of San Jose and Debra Figone

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 ROBERT SAPIEN, MARY KATHLEEN
MCCARTHY, THANH HO, RANDY
13 SEKANY and KEN HEREDIA,

Case No. 112CV225928

14 Plaintiffs and Petitioners,

NOTICE OF RELATED CASES

15 v.

Complaint filed: June 6, 2012

16 CITY OF SAN JOSE, DEBRA FIGONE, in
her official capacity as City Manager of the
17 CITY OF SAN JOSE, and DOES 1 through
18 15,

19 Defendants and Respondents.

BY FAX

20 THE BOARD OF ADMINISTRATION FOR
THE 1961 SAN JOSE POLICE AND FIRE
21 DEPARTMENT RETIREMENT PLAN,

22 Necessary Party in Interest.
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112CV225928

NOTICE OF RELATED CASES

1 NOTICE OF RELATED CASES

2 Four related state-court actions are currently pending before different judges in this Court
3 regarding the validity of Measure B, a pension-reform measure recently enacted by voters of the
4 City of San Jose ("City"). These actions are also related to a federal action for declaratory relief
5 filed by the City that is currently pending before the Honorable Lucy Koh in the United States
6 District Court for the Northern District of California.

7 The first-filed of the four state-court actions is *San Jose Police Officers' Association v.*
8 *City of San Jose*, Santa Clara County Superior Court Case No. 112CV225926, assigned to Hon.
9 Patricia M. Lucas in Dept. 2. On Friday, July 6, 2012, the City filed a Notice of Related Action in
10 that case. That Notice is attached hereto as Attachment 1.

11 The City's action in federal court is the first-filed of all five actions. It is also the most
12 comprehensive, encompassing all claims and parties, or parties in privity thereto, of the four
13 actions pending in this Court. Specifically, all five actions contain overlapping claims seeking
14 declaratory relief regarding the validity (or invalidity) of Measure B under the contracts, takings,
15 and due process clauses of the California Constitution. The City's federal action and the San Jose
16 Police Officers' Association's state court action also seek declaratory relief regarding Measure B's
17 validity (or invalidity) under the free speech, right to petition, separation of powers provisions
18 under the California Constitution, the Pension Protection Act, and the Meyers Miliias Brown Act,
19 and regarding whether Measure B breaches any contracts.

20 Requiring these identical and overlapping issues to be heard by different judges would
21 result in substantial duplication of state and federal judicial resources.

22 In light of the above, and given that only the City's federal action seeks adjudication of
23 federal claims, the single federal action is the most efficient forum for fully adjudicating the

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1 validity of Measure B. Accordingly, the City will shortly be filing a motion in Department 2 to
2 consolidate and stay the four state court actions so that the parties may litigate the validity of
3 Measure B in a single federal court action, before a single judge.
4

5 DATED: July 10, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

6
7 By: 

8 Arthur A. Hartinger

9 Linda M. Ross

Jennifer L. Nock

10 Michael C. Hughes

11 Attorneys for CITY OF SAN JOSE
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1931765.1

ATTACHMENT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Arthur A. Hartinger (SBN: 121521), Jennifer L. Nock (SBN: 160663) Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, California 94607 TELEPHONE NO.: (510) 808-2000 FAX NO. (Optional): (510) 444-1108 E-MAIL ADDRESS (Optional): ahartinger@meyersnave.com ATTORNEY FOR (Name): Defendant and Respondent City of San Jose		ENDORSED CM-015 FOR COURT USE ONLY FILED 2012 JUL -6 P 3:57 David H. Yarnall, Clerk of the Superior Court County of Santa Clara, California By: <i>[Signature]</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court (DCT)		
PLAINTIFF/PETITIONER: San Jose Police Officers' Association DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret Plan		CASE NUMBER: 112CV225926 JUDICIAL OFFICER: Hon. Patricia M. Lucas DEPT.: 2
NOTICE OF RELATED CASE		

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: City of San Jose v. San Jose Police Officers' Association, et al.
 b. Case number: 5:12 CV 02904 LHK PSG
 c. Court: ☐ same as above
☒ other state or federal court (name and address): U.S. District Court, N.D. Cal., 280 S. 1st St., SJ, CA
 d. Department: San Jose Division, Hon. Lucy Koh, Courtroom 8
 e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
 f. Filing date: June 5, 2012
 g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No
 h. Relationship of this case to the case referenced above (check all that apply):
☒ Involves the same parties and is based on the same or similar claims.
☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
☐ Involves claims against, title to, possession of, or damages to the same property.
☒ Is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
☒ Additional explanation is attached in attachment 1h
 i. Status of case:
☒ pending
☐ dismissed ☐ with ☐ without prejudice
☐ disposed of by judgment
2. a. Title: Robert Saplen, et al. v. City of San Jose, et al.
 b. Case number: 112CV225928
 c. Court: ☒ same as above
☐ other state or federal court (name and address):
 d. Department: Dept. 8, Hon. Peter Kirwan

BY FAX

PLAINTIFF/PETITIONER: San José Police Officers' Association	CASE NUMBER:
DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret P	112CV225926

2. (continued)

- e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
- f. Filing date: June 6, 2012
- g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No
- h. Relationship of this case to the case referenced above (check all that apply):
- ☐ involves the same parties and is based on the same or similar claims.
- ☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☒ Additional explanation is attached in attachment 2h
- i. Status of case:
- ☒ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

3. a. Title: Teresa Harris, et al. v. City of San Jose, et al.

b. Case number: 112CV226570

c. Court: ☒ same as above☐ other state or federal court (name and address):

d. Department: Dept. 9; Hon. Mark H. Pierce

e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):

f. Filing date: June 15, 2012

g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No

h. Relationship of this case to the case referenced above (check all that apply):

- ☐ involves the same parties and is based on the same or similar claims.
- ☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☒ Additional explanation is attached in attachment 3h

i. Status of case:

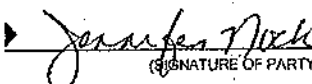
- ☒ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

4. ☒ Additional related cases are described in Attachment 4. Number of pages attached: 1

Date: July 6, 2012

Jennifer L. Nock, Attorney for City of San Jose

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)



(SIGNATURE OF PARTY OR ATTORNEY)

Attachments 4 and 1h-4h to Notice of Related Case Form CM-015

San Jose Police Officers' Association v. City of San Jose et al.

Case No. 112CV225926

Attachment 4

a Title: *John Mukhar, et al. v. City of San Jose, et al.*
b Case Number: 112CV226574
c Court: Same as above
d Department: Dept. 8, Hon. Peter Kirwan
e Case Type: Unlimited civil
f Filing Date: June 15, 2012
g Complex Case Status: No – case has not been designated complex.
h Relationship of This Case to the Case Referenced Above:
X Arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
X Is likely for other reasons to require substantial duplication of judicial resources if heard by different judges. Additional explanation is attached in attachment 4h.
i Status of Case: Pending

Attachment 1h-4h

Four related state-court actions are currently pending before different judges in this Court regarding the validity of Measure B, a pension-reform measure recently enacted by voters of the City of San Jose ("City"). These actions are also related to a federal action for declaratory relief filed by the City that is currently pending before the Honorable Lucy Koh in the United States District Court for the Northern District of California.

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In light of the above, and given that only the City's federal action seeks adjudication of federal claims, the single federal action is the most efficient forum for fully adjudicating the validity of Measure B. Accordingly, the City will shortly be filing a motion in Department 2 to consolidate and stay the four state court actions so that the parties may litigate the validity of Measure B in a single federal court action, before a single judge.

PLAINTIFF/PETITIONER: San José Police Officers' Association	CASE NUMBER:
DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret	112CV225926

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):

555 12th Street, Suite 1500
Oakland, California 94607

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (check one):
- a. ☐ deposited the sealed envelope with the United States Postal Service.
 - b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
3. The *Notice of Related Case* was mailed:
- a. on (date): July 6, 2012
 - b. from (city and state): Oakland, California

4. The envelope was addressed and mailed as follows:

a. Name of person served:
John McBride, Chris Platten, Mark Renner
Street address: 2125 Canoas Garden Ave, 120
City: San Jose
State and zip code: CA 95125

c. Name of person served:
Street address:
City:
State and zip code:

b. Name of person served:
Gregg Adam, Jonathan Yank, G. Martinez
Street address: 44 Montgomery St., Ste 400
City: San Francisco
State and zip code: CA 94104

d. Name of person served:
Street address:
City:
State and zip code:

☐ Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 6, 2012

Julie Hokanson

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

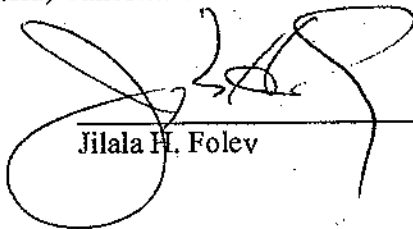
At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On July 10, 2012, I served true copies of the following document(s) described as **NOTICE OF RELATED CASES** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

Executed on July 10, 2012, at Oakland, California.



Jilala H. Folev

1932303.1

SERVICE LIST

<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN & RENNER 2125 Canoas Garden Avenue, Suite 120 San Jose, CA 95125</p>	<p>Attorneys for Plaintiffs/Petitioners, Robert Sapien, Mary McCarthy, Thanh Ho, Randy Sekany and Ken Heredia (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Defendant, San Jose Firefighters, I.A.F.F. Local 230 (U.S. Northern District Court Case No. 5:12-CV- 2904-LHK)</p> <p>AND</p> <p>Plaintiffs/Petitioners, John Mukhar, Dale Dapp, James Atkins, William Buffington And Kirk Pennington (Santa Clara Superior Court Case No. 112CV226574)</p> <p>AND</p> <p>Plaintiffs/Petitioners, Teresa Harris, Jon Reger, Moses Serrano and Suzann Stauffer (Santa Clara Superior Court Case No. 112CV226570)</p> <p>AND</p> <p>Defendant, City Assoc. of Management. Personnel, IFPTE, Local 21(U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p>
<p>Gregg McLean Adam Jonathan Yank Gonzalo Martinez Jennifer Stoughton CARROLL, BURDICK & MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104</p>	<p>Attorneys for Plaintiff, San Jose Police Officers' Assoc. (Santa Clara Superior Court Case No. 112CV225926)</p> <p>AND</p> <p>Attorneys for Defendant, San Jose Police Officers' Assoc. (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p>
<p>Teague P. Paterson BEESON, TAYER & BODINE, APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607</p>	<p>Attorneys for Defendant, AFSCME LOCAL 101 Municipal Employees Federal AFSCME, Local 101(U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p>

EXHIBIT V

(ENDORSED)
FILED

JUL 11 2012

David H. Varnado, Clerk of the Superior Court
County of Santa Clara, California

By: David H. Varnado
Deputy Clerk

1 Arthur A. Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Linda M. Ross (SBN: 133874)
lross@meyersnave.com
3 Jennifer L. Nock (SBN: 160663)
jnock@meyersnave.com
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5 MEYERS, NAVE, RIBACK, SILVER & WILSON
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6 Oakland, California 94607
Telephone: (510) 808-2000
7 Facsimile: (510) 444-1108

EXEMPT FROM FILING FEES
GOVT CODE § 6103

8 Attorneys for Defendants and Respondents
City of San Jose and Debra Figone

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 TERESA HARRIS, JON REGER, MOSES
SERRANO and SUZANN STAUFFER

Case No. 112CV226570

13 Plaintiff and Petitioner,

NOTICE OF RELATED CASES

14 v.

Complaint filed: June 15, 2012
Amended Complaint filed: July 3, 2012

15 CITY OF SAN JOSE, DEBRA FIGONE, in
16 her official capacity as City Manager of the
CITY OF SAN JOSE, and DOES 1 through
17 15,

18 Defendant and Respondent.

BY FAX

19 THE BOARD OF ADMINISTRATION FOR
20 THE 1961 SAN JOSE POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN,

21 Necessary Parties in Interest.
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112CV226570

NOTICE OF RELATED CASES

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1 validity of Measure B. Accordingly, the City will shortly be filing a motion in Department 2 to
2 consolidate and stay the four state court actions so that the parties may litigate the validity of
3 Measure B in a single federal court action, before a single judge.
4

5 DATED: July 10, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

6
7 By: 
8 Arthur A. Hartinger
9 Linda M. Ross
10 Jennifer L. Nock
11 Michael C. Hughes
12 Attorneys for CITY OF SAN JOSE
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ATTACHMENT 1

EXHIBIT W

(ENDORSED)
FILED

JUL 11 2012

David H. Yamashita, Clerk of the Superior Court
County of Santa Clara, California

By

Deputy Clerk

Jauregui

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

1 Arthur A. Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Linda M. Ross (SBN: 133874)
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Telephone: (510) 808-2000
7 Facsimile: (510) 444-1108

8 Attorneys for Defendants and Respondents
City of San Jose and Debra Figone

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SANTA CLARA**

12 JOHN MUKHAR, DALE DAPP, JAMES
13 ATKINS, WILLIAM BUFFINGTON and
KIRK PENNINGTON,

14 Plaintiffs and Petitioners,

15 v.

16 CITY OF SAN JOSE, DEBRA FIGONE, in
her official capacity as City Manager of the
17 CITY OF SAN JOSE, and DOES 1 through
18 15,

19 Defendants and Respondents.

20 THE BOARD OF ADMINISTRATION FOR
THE 1975 FEDERATED CITY
21 EMPLOYEES' RETIREMENT PLAN,

22 Necessary Party in Interest.
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Case No. 112CV226574

NOTICE OF RELATED CASES

Complaint filed: June 15, 2012

BY FAX

112CV226574

NOTICE OF RELATED CASES

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1 validity of Measure B. Accordingly, the City will shortly be filing a motion in Department 2 to
2 consolidate and stay the four state court actions so that the parties may litigate the validity of
3 Measure B in a single federal court action, before a single judge.

4
5 DATED: July 10, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

6
7 By: 

8 Arthur A. Hartinger

9 Linda M. Ross

Jennifer L. Mock

10 Michael C. Hughes

11 Attorneys for CITY OF SAN JOSE

12 1932409.1

ATTACHMENT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Arthur A. Hartinger (SBN: 121521), Jennifer L. Nock (SBN: 160663) Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, California 94607 TELEPHONE NO.: (510) 808-2000 FAX NO. (optional): (510) 444-1108 E-MAIL ADDRESS (optional): ahartinger@meyersnave.com ATTORNEY FOR (Name): Defendant and Respondent City of San Jose		CM-015 ENDORSED FILED 2012 JUL -6 P 3:57 David H. Yonash, Clerk of the Superior Court County of Santa Clara, California By: <i>[Signature]</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court (DCT)		
PLAINTIFF/PETITIONER: San Jose Police Officers' Association DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret Plan		CASE NUMBER: 112CV225926 JUDICIAL OFFICER: Hon. Patricia M. Lucas DEPT.: 2
NOTICE OF RELATED CASE		

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: City of San Jose v. San Jose Police Officers' Association, et al.
 b. Case number: 5:12 CV 02904 LHK PSG
 c. Court: ☐ same as above
☒ other state or federal court (name and address): U.S. District Court, N.D. Cal., 280 S. 1st St., SJ, CA
 d. Department: San Jose Division, Hon. Lucy Koh, Courtroom 8
 e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
 f. Filing date: June 5, 2012
 g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No
 h. Relationship of this case to the case referenced above (check all that apply):
☒ involves the same parties and is based on the same or similar claims.
☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
☐ involves claims against title to, possession of, or damages to the same property.
☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
☒ Additional explanation is attached in attachment 1h
 i. Status of case:
☒ pending
☐ dismissed ☐ with ☐ without prejudice
☐ disposed of by judgment
2. a. Title: Robert Saplen, et al. v. City of San Jose, et al.
 b. Case number: 112CV225928
 c. Court: ☒ same as above
☐ other state or federal court (name and address):
 d. Department: Dept. 8, Hon. Peter Kirwan

BY FAX

PLAINTIFF/PETITIONER: San Jose Police Officers' Association	CASE NUMBER:
DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret P	112CV225926

2. (continued)

- e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
- f. Filing date: June 6, 2012
- g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No
- h. Relationship of this case to the case referenced above (check all that apply):
- ☐ Involves the same parties and is based on the same or similar claims.
- ☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☒ Additional explanation is attached in attachment 2h
- i. Status of case:
- ☒ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

3. a. Title: Teresa Harris, et al. v. City of San Jose, et al.

b. Case number: 112CV226570

c. Court: ☒ same as above☐ other state or federal court (name and address):

d. Department: Dept. 9; Hon. Mark H. Pierce

e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):

f. Filing date: June 15, 2012

g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No

h. Relationship of this case to the case referenced above (check all that apply):

- ☐ Involves the same parties and is based on the same or similar claims.
- ☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☒ Additional explanation is attached in attachment 3h

i. Status of case:

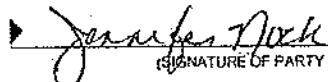
- ☒ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

4. ☒ Additional related cases are described in Attachment 4. Number of pages attached: 1

Date: July 6, 2012

Jennifer L. Nock, Attorney for City of San Jose

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)



(SIGNATURE OF PARTY OR ATTORNEY)

Attachments 4 and 1h-4h to Notice of Related Case Form CM-015

San Jose Police Officers' Association v. City of San Jose et al.

Case No. 112CV225926

Attachment 4

- a Title: *John Mukhar, et al. v. City of San Jose, et al.*
b Case Number: 112CV226574
c Court: Same as above
d Department: Dept. 8, Hon. Peter Kirwan
e Case Type: Unlimited civil
f Filing Date: June 15, 2012
g Complex Case Status: No – case has not been designated complex.
h Relationship of This Case to the Case Referenced Above:
X Arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
X Is likely for other reasons to require substantial duplication of judicial resources if heard by different judges. Additional explanation is attached in attachment 4h.
i Status of Case: Pending


Attachment 1h-4h

Four related state-court actions are currently pending before different judges in this Court regarding the validity of Measure B, a pension-reform measure recently enacted by voters of the City of San Jose ("City"). These actions are also related to a federal action for declaratory relief filed by the City that is currently pending before the Honorable Lucy Koh in the United States District Court for the Northern District of California.

The City's action is the first-filed of all five actions. It is also the most comprehensive, encompassing all the claims and parties, or parties in privity thereto, of the four actions pending in this Court. Specifically, all five actions contain overlapping claims seeking declaratory relief regarding the validity (or invalidity) of Measure B under the contracts, takings, and due process clauses of the California Constitution. The City's federal action and the San Jose Police Officers' Association's state court action also seek declaratory relief regarding Measure B's validity (or invalidity) under the free speech, right to petition, separation of powers provisions under the California Constitution, the Pension Protection Act, the Meyers Miliias Brown Act, and regarding whether Measure B breaches any contracts.

Requiring these identical and overlapping issue to be heard by different judges would result in substantial duplication of state and federal judicial resources.

In light of the above, and given that only the City's federal action seeks adjudication of federal claims, the single federal action is the most efficient forum for fully adjudicating the validity of Measure B. Accordingly, the City will shortly be filing a motion in Department 2 to consolidate and stay the four state court actions so that the parties may litigate the validity of Measure B in a single federal court action, before a single judge.

PLAINTIFF/PETITIONER: San Jose Police Officers' Association	CASE NUMBER:
DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret 	112CV225926

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):

555 12th Street, Suite 1500
Oakland, California 94607

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (check one):
- ☐ deposited the sealed envelope with the United States Postal Service.
 - ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:

- on (date): July 6, 2012
- from (city and state): Oakland, California

4. The envelope was addressed and mailed as follows:

- | | |
|--|--|
| a. Name of person served:
John McBride, Chris Platten, Mark Renner
Street address: 2125 Canoas Garden Ave, 120
City: San Jose
State and zip code: CA 95125 | c. Name of person served:

Street address:
City:
State and zip code: |
| b. Name of person served:
Gregg Adam, Jonathan Yank, G. Martinez
Street address: 44 Montgomery St., Ste 400
City: San Francisco
State and zip code: CA 94104 | d. Name of person served:

Street address:
City:
State and zip code: |

☐ Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 6, 2012

Julie Hokanson

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

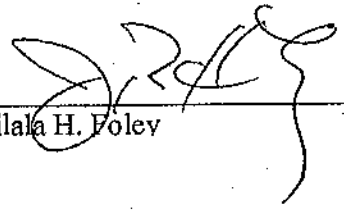
3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Alameda, State of California. My business address is 555 12th Street,
Suite 1500, Oakland, CA 94607.

5 On July 10, 2012, I served true copies of the following document(s) described as **NOTICE**
6 **OF RELATED CASES** on the interested parties in this action as follows:

7 **SEE ATTACHED SERVICE LIST**

8 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
9 persons at the addresses listed in the Service List and placed the envelope for collection and
10 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On
the same day that the correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

11 Executed on July 10, 2012, at Oakland, California.

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SERVICE LIST

<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN & RENNER 2125 Canoas Garden Avenue, Suite 120 San Jose, CA 95125</p>	<p>Attorneys for Plaintiffs/Petitioners, Robert Sapient, Mary McCarthy, Thanh Ho, Randy Sekany and Ken Heredia (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Defendant, San Jose Firefighters, I.A.F.F. Local 230 (U.S. Northern District Court Case No. 5:12-CV- 2904-LHK)</p> <p>AND</p> <p>Plaintiffs/Petitioners, John Mukhar, Dale Dapp, James Atkins, William Buffington And Kirk Pennington (Santa Clara Superior Court Case No. 112CV226574)</p> <p>AND</p> <p>Plaintiffs/Petitioners, Teresa Harris, Jon Reger, Moses Serrano and Suzann Stauffer (Santa Clara Superior Court Case No. 112CV226570)</p> <p>AND</p> <p>Defendant, City Assoc. of Management. Personnel, IFPTE, Local 21 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p>
<p>Gregg McLean Adam Jonathan Yank Gonzalo Martinez Jennifer Stoughton CARROLL, BURDICK & MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104</p>	<p>Attorneys for Plaintiff, San Jose Police Officers' Assoc. (Santa Clara Superior Court Case No. 112CV225926)</p> <p>AND</p> <p>Attorneys for Defendant, San Jose Police Officers' Assoc. (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p>
<p>Teague P. Paterson BEESON, TAYER & BODINE, APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607</p>	<p>Attorneys for Defendant, AFSCME LOCAL 101 Municipal Employees Federal AFSCME, Local 101 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p>

EXHIBIT X

1 Arthur A. Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Linda M. Ross (SBN: 133874)
lross@meyersnave.com
3 Jennifer L. Nock (SBN: 160663)
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4 Michael C. Hughes (SBN: 215694)
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6 Oakland, California 94607
Telephone: (510) 808-2000
7 Facsimile: (510) 444-1108

8 Attorneys for Defendants and Respondents
City of San José and Debra Figone

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 AMERICAN FEDERATION OF STATE,
13 COUNTY, AND MUNICIPAL
EMPLOYEES, LOCAL 101, on behalf of its
14 members,

15 Plaintiffs and Petitioners,

16 v.

17 CITY OF SAN JOSÉ, DEBRA FIGONE, in
her official capacity as City Manager,

18 Defendants and Respondents.

19 THE BOARD OF ADMINISTRATION FOR
20 THE FEDERATED CITY EMPLOYEES'
21 RETIREMENT PLAN,

22 Necessary Party in Interest.
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ENDORSED
FILED

JUL 13 2012

County of Santa Clara Superior Court
County of Santa Clara, California
By Robert Wasson

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

Case No. 112CV227864

NOTICE OF RELATED CASES

Complaint filed: July 5, 2012

BY FAX

112CV227864

NOTICE OF RELATED CASES

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1 consolidate and stay the four state court actions so that the parties may litigate the validity of
2 Measure B in a single federal court action, before a single judge.
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5 DATED: July 12, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

6
7 By: 

8 Arthur A. Hartinger

9 Linda M. Ross

Jennifer L. Nock

10 Michael C. Hughes

11 Attorneys for CITY OF SAN JOSÉ

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ATTACHMENT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Arthur A. Hartinger (SBN: 121321), Jennifer L. Nock (SBN: 160663) Meyers, Nave, Riback, Silver & Wilson 335 12th Street, Suite 1500 Oakland, California 94607 TELEPHONE NO.: (510) 808-2000 FAX NO. (optional): (510) 444-1108 E-MAIL ADDRESS (optional): ahartinger@meyersnave.com ATTORNEY FOR (Name): Defendant and Respondent City of San Jose		ENDORSED FILED 2012 JUL -6 P 3:57 David H. Yoncoski, Clerk of the Superior Court County of Santa Clara, California By: <i>[Signature]</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court (DCT)		
PLAINTIFF/PETITIONER: San Jose Police Officers' Association DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret Pln		CASE NUMBER: 112CV225926 JUDICIAL OFFICER: Hon. Patricia M. Lucas DEPT.: 2
NOTICE OF RELATED CASE		

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: City of San Jose v. San Jose Police Officers' Association, et al.
 b. Case number: 5:12 CV 02904 LHK PSG
 c. Court: ☐ same as above
☒ other state or federal court (name and address): U.S. District Court, N.D. Cal., 280 S. 1st St., SJ, CA
 d. Department: San Jose Division, Hon. Lucy Koh, Courtroom 8
 e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
 f. Filing date: June 5, 2012
 g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No
 h. Relationship of this case to the case referenced above (check all that apply):
☒ Involves the same parties and is based on the same or similar claims.
☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
☐ Involves claims against, title to, possession of, or damages to the same property.
☒ Is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
☒ Additional explanation is attached in attachment 1h
 i. Status of case:
☒ pending
☐ dismissed ☐ with ☐ without prejudice
☐ disposed of by judgment
2. a. Title: Robert Saplen, et al. v. City of San Jose, et al.
 b. Case number: 112CV225928
 c. Court: ☒ same as above
☐ other state or federal court (name and address):
 d. Department: Dept. 8, Hon. Peter Kirwan

BY FAX

PLAINTIFF/PETITIONER: San Jose Police Officers' Association	CASE NUMBER: 112CV225926
DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret P	

2. (continued)

- e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
- f. Filing date: June 6, 2012
- g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No
- h. Relationship of this case to the case referenced above (check all that apply):
- ☐ involves the same parties and is based on the same or similar claims.
- ☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☒ Additional explanation is attached in attachment 2h
- i. Status of case:
- ☒ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

3. a. Title: Teresa Harris, et al. v. City of San Jose, et al.

b. Case number: 112CV226570

c. Court: ☒ same as above☐ other state or federal court (name and address):

d. Department: Dept. 9; Hon. Mark H. Pierce

e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):

f. Filing date: June 15, 2012

g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No

h. Relationship of this case to the case referenced above (check all that apply):

- ☐ involves the same parties and is based on the same or similar claims.
- ☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☒ Additional explanation is attached in attachment 3h

i. Status of case:

- ☒ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

4. ☒ Additional related cases are described in Attachment 4. Number of pages attached: 1

Date: July 6, 2012

Jennifer L. Nock, Attorney for City of San Jose

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)


(SIGNATURE OF PARTY OR ATTORNEY)

Attachments 4 and 1h-4h to Notice of Related Case Form CM-015

San Jose Police Officers' Association v. City of San Jose et al.

Case No. 112CV225926

Attachment 4

a Title: *John Mukhar, et al. v. City of San Jose, et al.*
b Case Number: 112CV226574
c Court: Same as above
d Department: Dept. 8, Hon. Peter Kirwan
e Case Type: Unlimited civil
f Filing Date: June 15, 2012
g Complex Case Status: No – case has not been designated complex.
h Relationship of This Case to the Case Referenced Above:
X Arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
X Is likely for other reasons to require substantial duplication of judicial resources if heard by different judges. Additional explanation is attached in attachment 4h.
i Status of Case: Pending

Attachment 1h-4h

Four related state-court actions are currently pending before different judges in this Court regarding the validity of Measure B, a pension-reform measure recently enacted by voters of the City of San Jose ("City"). These actions are also related to a federal action for declaratory relief filed by the City that is currently pending before the Honorable Lucy Koh in the United States District Court for the Northern District of California.

The City's action is the first-filed of all five actions. It is also the most comprehensive, encompassing all the claims and parties, or parties in privity thereto, of the four actions pending in this Court. Specifically, all five actions contain overlapping claims seeking declaratory relief regarding the validity (or invalidity) of Measure B under the contracts, takings, and due process clauses of the California Constitution. The City's federal action and the San Jose Police Officers' Association's state court action also seek declaratory relief regarding Measure B's validity (or invalidity) under the free speech, right to petition, separation of powers provisions under the California Constitution, the Pension Protection Act, the Meyers Milias Brown Act, and regarding whether Measure B breaches any contracts.

Requiring these identical and overlapping issue to be heard by different judges would result in substantial duplication of state and federal judicial resources.

In light of the above, and given that only the City's federal action seeks adjudication of federal claims, the single federal action is the most efficient forum for fully adjudicating the validity of Measure B. Accordingly, the City will shortly be filing a motion in Department 2 to consolidate and stay the four state court actions so that the parties may litigate the validity of Measure B in a single federal court action, before a single judge.

PLAINTIFF/PETITIONER: San Jose Police Officers' Association	CASE NUMBER:
DEFENDANT/RESPONDENT: City of San Jose, Bd Admin for Police Fire Ret P	112CV225926

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):

555 12th Street, Suite 1500
Oakland, California 94607

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (check one):

- a. ☐ deposited the sealed envelope with the United States Postal Service.
b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:

- a. on (date): July 6, 2012
b. from (city and state): Oakland, California

4. The envelope was addressed and mailed as follows:

- a. Name of person served:

John McBride, Chris Platten, Mark Renner
Street address: 2125 Canoas Garden Ave, 120
City: San Jose
State and zip code: CA 95125

- c. Name of person served:

Street address:
City:
State and zip code:

- b. Name of person served:

Gregg Adam, Jonathan Yank, G. Martinez
Street address: 44 Montgomery St., Ste 400
City: San Francisco
State and zip code: CA 94104

- d. Name of person served:

Street address:
City:
State and zip code:

☐ Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 6, 2012

Julie Hokanson

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Alameda, State of California. My business address is 555 12th Street,
Suite 1500, Oakland, CA 94607.

5 On July 12, 2012, I served true copies of the following document(s) described as
6 **NOTICE OF RELATED CASES** on the interested parties in this action as follows:

7 **SEE ATTACHED SERVICE LIST**

8 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
9 persons at the addresses listed in the Service List and placed the envelope for collection and
10 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
11 Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On
the same day that the correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

12 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

13 Executed on July 12, 2012, at Oakland, California.

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SERVICE LIST

<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN & RENNER 2125 Canoas Garden Avenue, Suite 120 San Jose, CA 95125</p>	<p>Attorneys for Plaintiffs/Petitioners, Robert Sapien, Mary McCarthy, Thanh Ho, Randy Sekany and Ken Heredia (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Defendant, San Jose Firefighters, I.A.F.F. Local 230 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p> <p>AND</p> <p>Plaintiffs/Petitioners, John Mukhar, Dale Dapp, James Atkins, William Buffington And Kirk Pennington (Santa Clara Superior Court Case No. 112CV226574)</p> <p>AND</p> <p>Plaintiffs/Petitioners, Teresa Harris, Jon Reger, Moses Serrano and Suzann Stauffer (Santa Clara Superior Court Case No. 112CV226570)</p> <p>AND</p> <p>Defendant, City Assoc. of Management. Personnel, IFPTE, Local 21(U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p> <p>AND</p> <p>Defendant, The International Union of Operating Engineers, Local No. 3 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p>
<p>Gregg McLean Adam Jonathan Yank Gonzalo Martinez Jennifer Stoughton CARROLL, BURDICK & MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104</p>	<p>Attorneys for Plaintiff, San Jose Police Officers' Assoc. (Santa Clara Superior Court Case No. 112CV225926)</p> <p>AND</p> <p>Defendant, San Jose Police Officers' Assoc. (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p>

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Teague P. Paterson BEESON, TAYER & BODINE, APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607	Attorneys for Defendant, AFSCME LOCAL 101 Municipal Employees Federal AFSCME, Local 101(U.S. Northern District Court Case No. 5:12- CV-2904-LHK) AND Plaintiff, AFSCME LOCAL 101 (Santa Clara County Superior Court Case No. 112CV227864)
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EXHIBIT Y

**WYLIE, MCBRIDE,
PLATTEN & RENNER**

A Law Corporation

2125 CANOAS GARDEN AVENUE, SUITE 120
SAN JOSE, CALIFORNIA 95125

TELEPHONE 408.979.2920
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DANIEL A. MENENDEZ
AMY L. SEKANY

RICHARD J. WYLIE, Retired

Direct Dial Number

July 17, 2012

Honorable Patricia M. Lucas
Superior Court County of Santa Clara
191 North First Street – Dept. 2
San Jose, CA 95113

**Re: *San Jose Police Officers' Association v. City of San Jose, et al*
Case No. 112CV225926 filed June 6, 2012**

Dear Judge Lucas:

We deliver herewith for your attention the Notices of Related cases filed in accordance with CRC 3.300 in the above case and in *Saplen, et al v. City of San Jose, et al.*, Case No. 112CV225928, and *American Federation of State, County, and Municipal Employees, Local 101 v. City of San Jose, Debra Fligone, et al.*, Case No. 112CV227864.

Each of the related state cases are filed in Santa Clara County Superior Court and are unlimited civil cases.

The San Jose Police Officers' Association case is assigned to your Department and is the first related state case to be filed.

No objection to the Notices of Related Cases has been filed and it would appear that an order that they are related to the San Jose Police Officers' Association case pursuant to CRC 3.300(h) would be appropriate.

Yours truly,



JOHN MCBRIDE

JMB:jlc

Enclosure

cc: See attached Service List

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PROOF OF SERVICE
(C.C.P. 1013(3) & 1011)
(Revised 1/1/88)

I, the undersigned, say:

That I am now and at all times herein mentioned a citizen of the United States and resident of Santa Clara County, California. I am over the age of eighteen years and not a party to this action. My address is 2125 Canoas Garden Ave., Suite 120, San Jose, CA 95125. On this date I served

Letter to Judge Patricia M. Lucas dated July 17, 2012

X by placing a true copy thereof, enclosed in a sealed envelope with postage fully prepaid, in the United States Post Office mail at San Jose, Santa Clara County, California, addressed as set forth below. I am familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

	Richard Doyle, City Attorney City of San Jose 200 East Santa Clara Street San Jose, CA 95113
Debra Figone, City Manager City of San Jose 200 East Santa Clara Street San Jose, CA 95113	Arthur A. Hartinger, Esq. Meyers, Nave, Riback, Silver & Wilson 555 12 th Street, Suite 1500 Oakland, CA 94607 <i>Attorneys for The City of San Jose</i>
Teague P. Paterson, Esq. Vishtasp M. Soroushian, Esq. Beeson, Tayer & Bodine, APC 483 Ninth Street, 2 nd Floor Oakland, CA 94607-4051 <i>Attorneys for Municipal Employees Federation, AFSCME Local 101</i>	Gregg McLean Adam, Esq. Jonathan Yank, Esq. Carroll, Burdick & McDonough LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104 <i>Attorneys for San Jose Police Officers' Association</i>
Harvey L. Leiderman, Esq. Reed Smith, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105 <i>Attorneys for The Board of Administration for the 1961 San Jose Police and Fire Department Retirement Plan and The Board of Administration for the 1975 Federated City Employees' Retirement Plan</i>	

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 17th day of July, 2012, at San Jose, California.

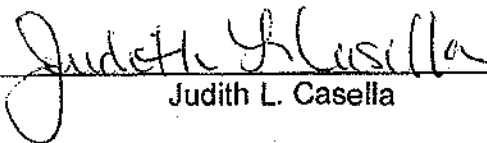

Judith L. Casella

EXHIBIT Z



A Commitment to Public Law

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tel (510) 808-2000
fax (510) 444-1108
www.meyersnave.com

Arthur A. Hartinger
Attorney at Law
ahartinger@meyersnave.com

July 23, 2012

Via Federal Express

Honorable Patricia M. Lucas
Santa Clara County Superior Court
Department 2
191 N. First Street
San Jose, CA 95113

RE: *San Jose Police Officers' Association v. City of San Jose, et al.*;
Santa Clara County Superior Court Case No. 112CV225926

Dear Judge Lucas:

I write on behalf of the City of San Jose ("the City") to respond briefly to Mr. McBride's letter to you dated July 17, 2012.

The City agrees with counsel that the following cases are related to the above-referenced case:

- *Robert Sapien, et al. vs. City of San Jose, et al.*; Santa Clara County Superior Court No. 112CV225928
- *Teresa Harris, et al. vs. City of San Jose, et al.*; Santa Clara County Superior Court No. 112CV226570
- *John Mukbar, et al. vs. City of San Jose, et al.*; Santa Clara County Superior Court No. 112CV226574
- *AFSCME, Local 101 vs. City of San Jose, et al.*; Santa Clara County Superior Court No. 112CV227864

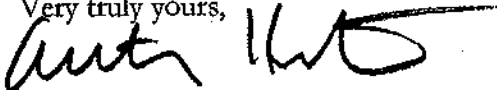
The City previously filed its Notice of Related cases with respect to these lawsuits.

Honorable Patricia M. Lucas
July 23, 2012
Page 2

In addition, another related case - the first filed case - is pending in United States District Court, *City of San Jose vs. San Jose Police Officers' Association, et al.*; USDC No. 5:12-CV-02904 LHK. The City is filing a motion to consolidate the State court actions, as well as a motion to stay the State court actions pending the federal case. We anticipate the motions will be set for hearing on August 23.

Thank you for your consideration in this matter.

Very truly yours,



Arthur A. Hartinger

AAH:kt

Cc: John McBride (counsel in *Sapien, Harris and Mukhar*)
Gregg Adam (counsel in *SJPOA*)
Teague Paterson (counsel in *AFSCME*)

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